



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

HARVARD LAW LIBRARY



3 2044 097 879 597

HD



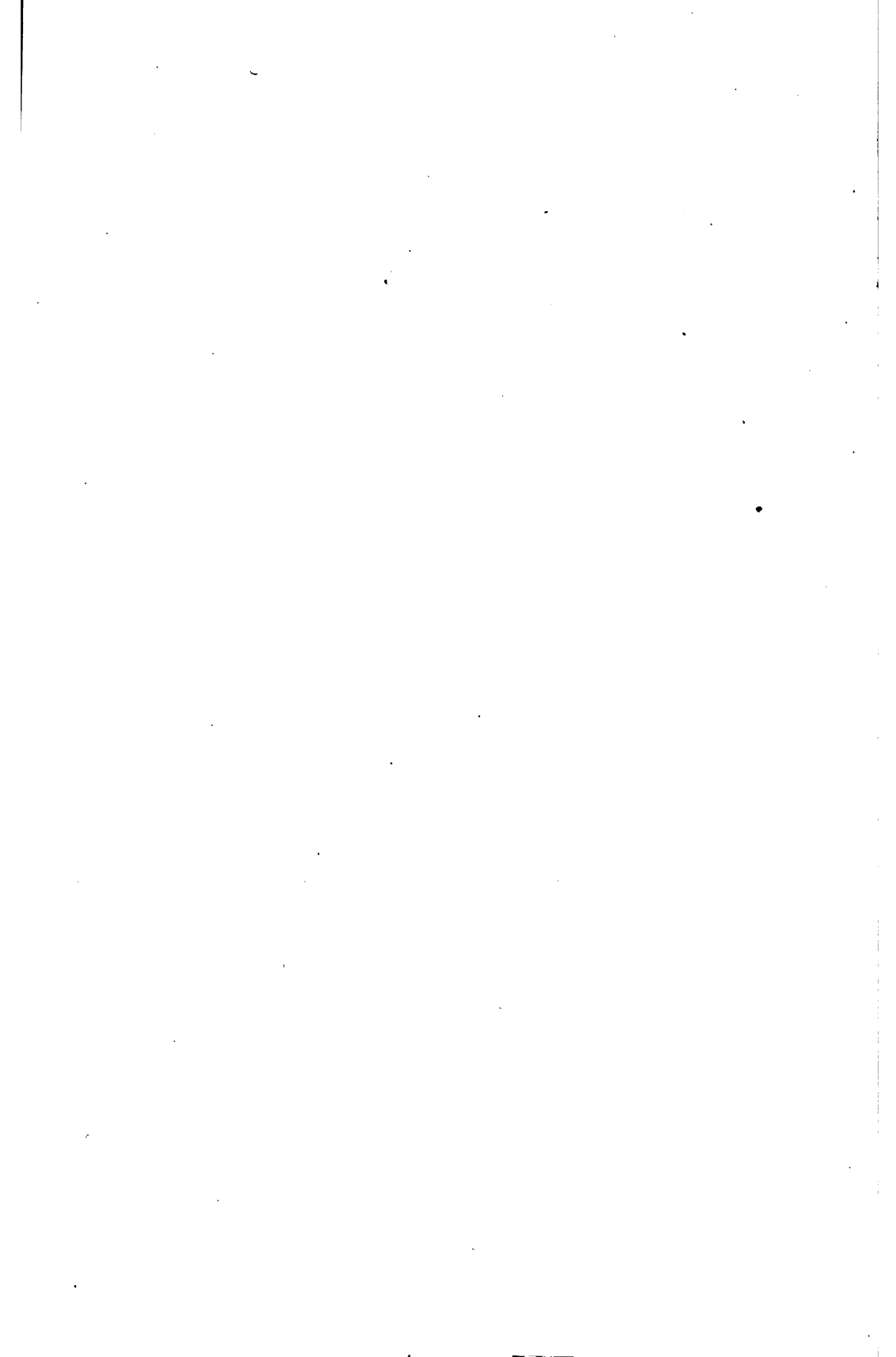
HARVARD LAW LIBRARY

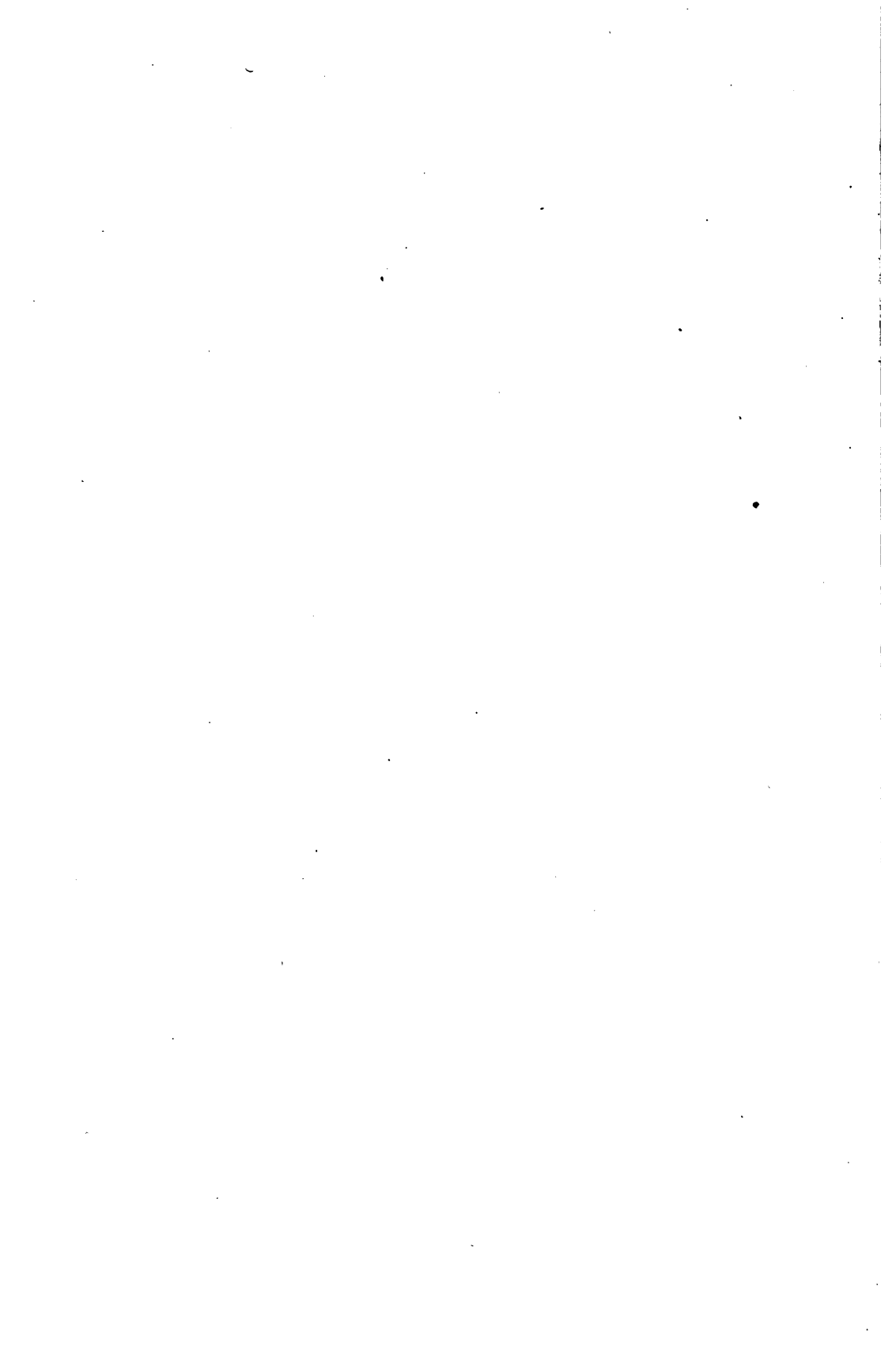
GIFT OF

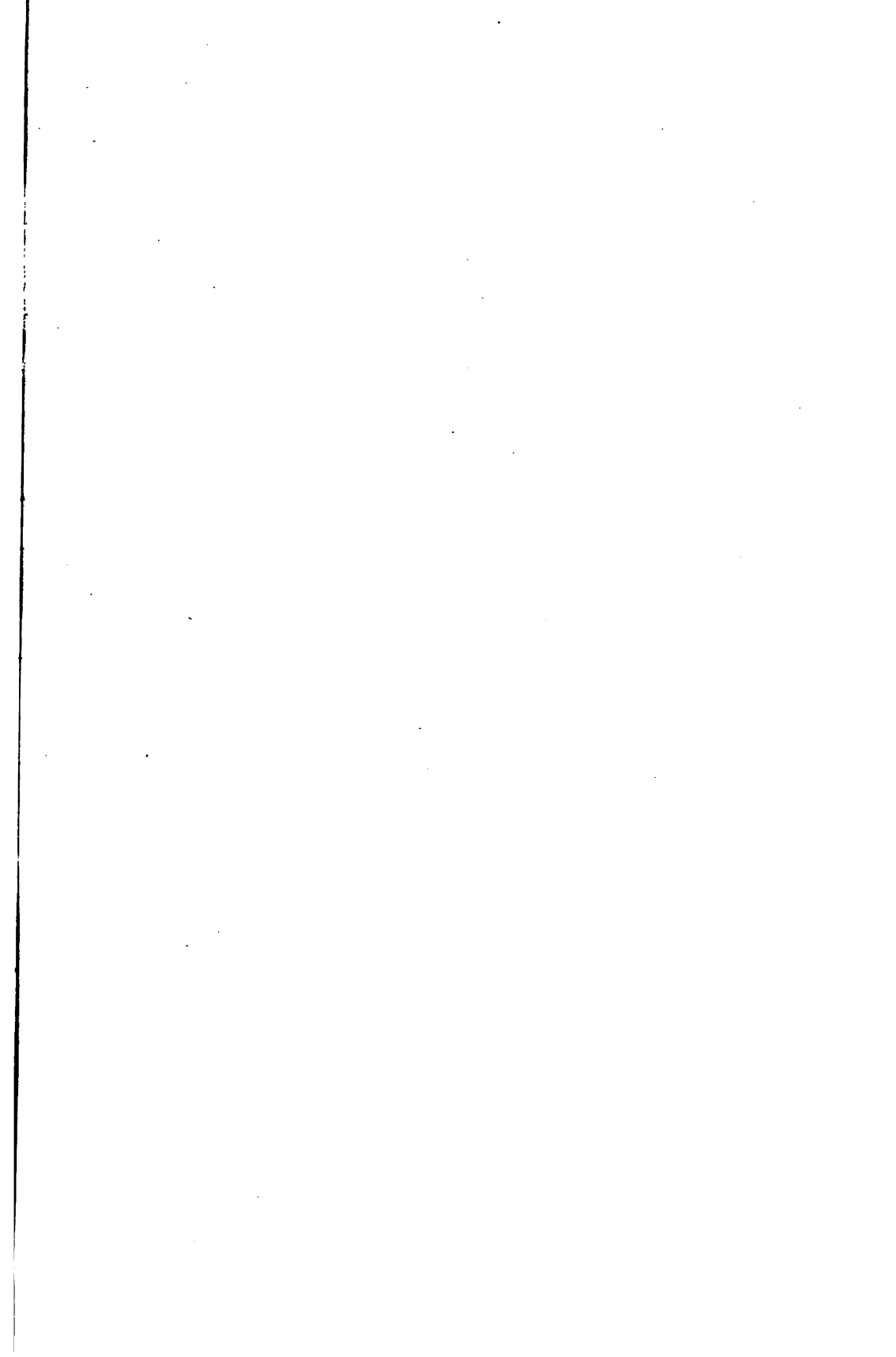
The Commission

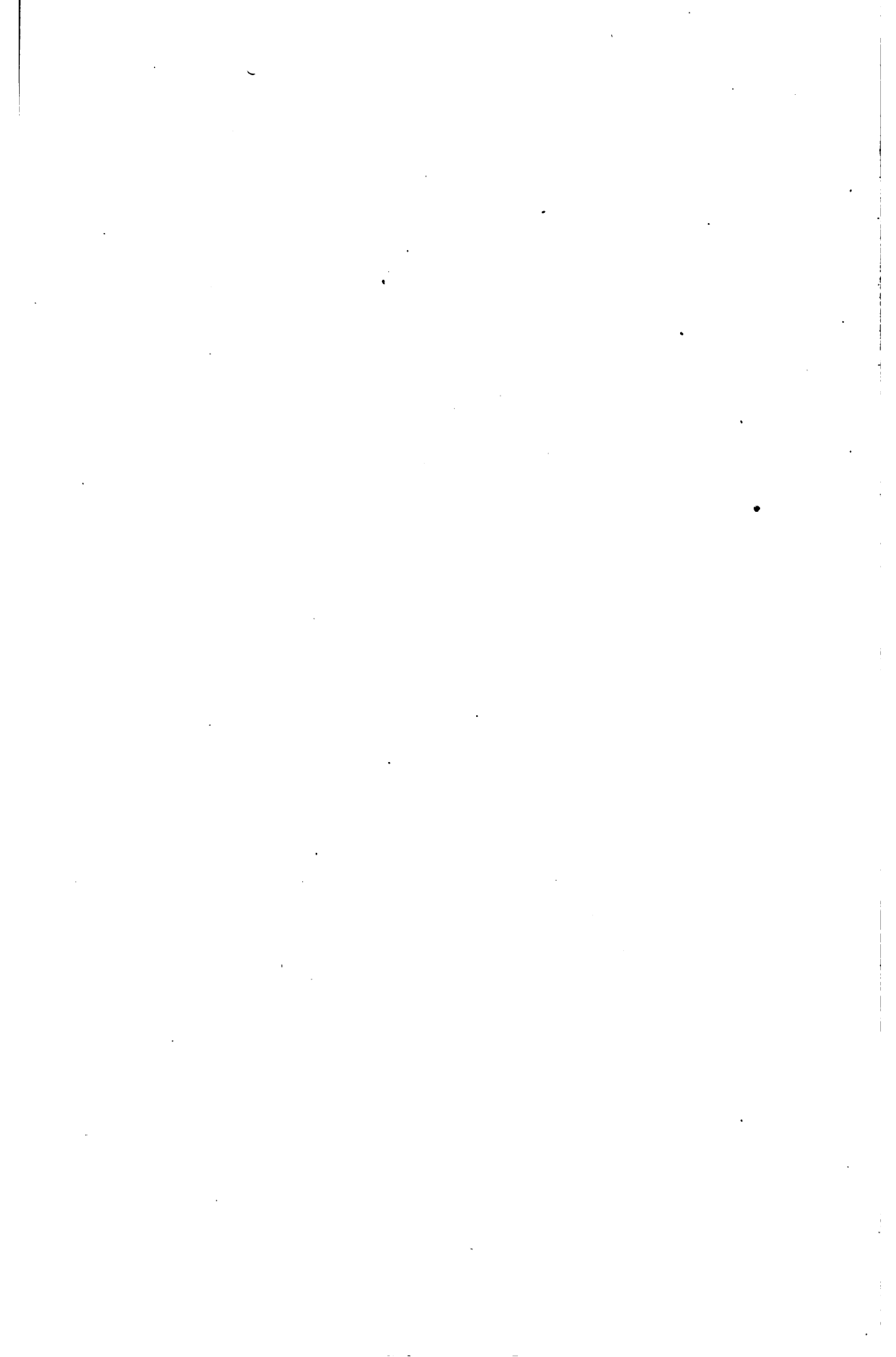
Received JUL 10 1923

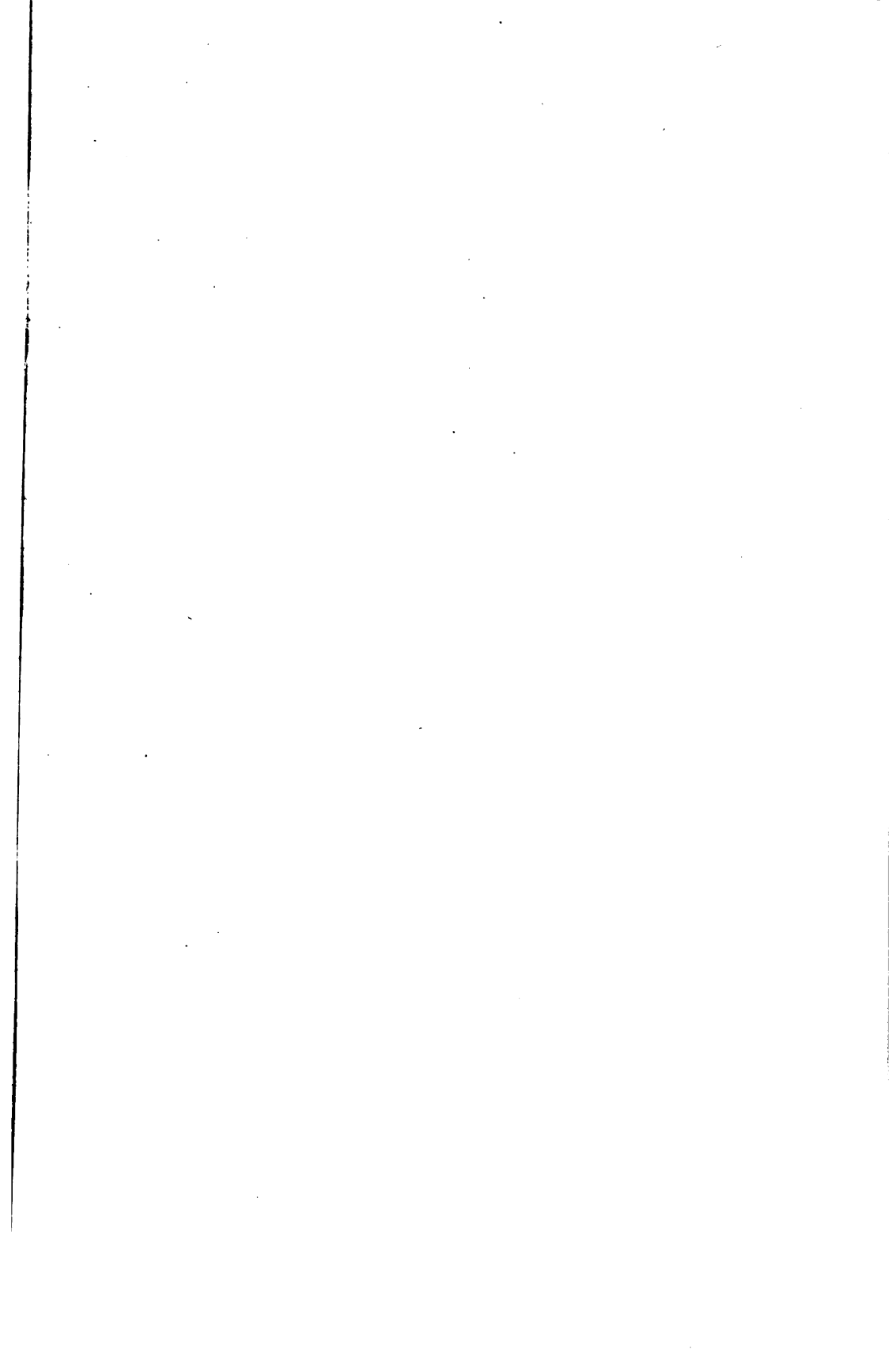












COMMISSIONERS

GEORGE McANENY, *Chairman*

LeROY T. HARKNESS

JOHN F. O'RYAN

HOWARD THAYER KINGSBURY*

Counsel

GEORGE O. REDINGTON

Counsel

JAMES B. WALKER

Secretary

*Resigned February 15, 1922, and was succeeded by George O. Redington

85

REPORTS OF DECISIONS

OF THE

TRANSIT COMMISSION

(NEW YORK CITY)

OF THE STATE OF NEW YORK

VOLUME II

January 1, 1922, to December 31, 1922

(Including Memoranda of Cases Decided without the Writing of Opinions,
from January 1, 1922, to December 31, 1922)

PUBLISHED BY THE COMMISSION
NEW YORK

1922

HERALD SQUARE PRESS, N. Y.

JUL 1 0 1923

CONTENTS

	Page
Table of Cases Reported	i
Table of Orders Quoted From	iv
Table of Cases Cited	vi
Table of Statutes Cited	vii
Companies Index	viii
Localities Index	x
Determinations by the Commission Passed upon by Courts....	xvi
Amendments to the Public Service Commission Law Enacted during the Legislative Session of 1922.....	xlix
Editorial Note	lxiv
Opinions (from January 1, 1922, to and including December 31, 1922)	1-225
Memoranda of Cases Decided without the Writing of Opinions (from January 1, 1922, to and including December 31, 1922)	229
Index to Cases Decided without the Writing of Opinions (from January 1, 1922, to and including December 31, 1922)...	259



TABLE OF CASES REPORTED

CASE NO.	PAGE
1264 In the Matter of the Hearing on the motion of the Commission on the question of alterations and changes in the following grade crossing with the tracks of the LONG ISLAND RAILROAD COMPANY: Hempstead and Jamaica Turnpike	211
1380 In the Matter of the Hearing on the motion of the Commission on the question of the alterations and changes in the following grade crossings with the tracks of the LONG ISLAND RAILROAD COMPANY: Bennett or Baylis Avenue; Wertland Avenue; Creed Avenue; Madison Avenue	211
1727 In the Matter of the LONG ISLAND RAILROAD COMPANY—Discontinuance of station at South Street, Jamaica, Long Island	39
1901 In the Matter of the Application of John Adikes and Thomas Adikes, composing the firm of J. & T. Adikes, pursuant to the provisions of Section 27 of the Public Service Commissions Law, for an order directing the construction and establishment of a side-track and switch connection between a lateral line of railroad or private side-track and the line of railroad of The Long Island Railroad Company, at Jamaica, in the Borough of Queens, City of New York	44
2158 In the Matter of the Application of THE BRONX TRACTION COMPANY, under Section 184 of the Railroad Law for approval of the Transit Commission of the Declaration of Abandonment of a portion of its route and franchises on Morris Park Avenue from Bronxdale Avenue to Williamsbridge Road in the Borough of The Bronx, County of Bronx, City and State of New York	121
2182 In the Matter of the Application of INTERBOROUGH RAPID TRANSIT COMPANY for authority to issue \$16,436,000 face amount of 5% bonds under and secured by its First and Refunding Mortgage dated March 20, 1913	176
2218 In the Matter of the Application of INTERBOROUGH RAPID TRANSIT COMPANY for authority to issue \$25,483,772 face amount of 5% bonds under and secured by its First and Refunding Mortgage dated March 20, 1913	176
2306 In the Matter of the Application of INTERBOROUGH RAPID TRANSIT COMPANY for authority to issue and dispose of \$39,416,000 face amount of three year 7% notes	177
2375 In the Matter of the Application of LINDLEY M. GARRISON, as Receiver of NEW YORK MUNICIPAL RAILWAY CORPORATION and as Receiver of NEW YORK CONSOLIDATED RAILROAD COMPANY, for an order modifying and supplementing order of Public Service Commission for the First District of the State of New York, dated August 15, 1919, in Case No. 2375, and an	

TRANSIT COMMISSION

CASE NO.		PAGE
	order of John H. Delaney, as Transit Construction Commissioner, dated August 15, 1919, and order of the Transit Commission dated May 31, 1921, so as to authorize and consent to extension of maturity date of joint and several certificates of Indebtedness of LINDLEY M. GARRISON, as Receiver of NEW YORK MUNICIPAL RAILWAY CORPORATION and as Receiver of NEW YORK CONSOLIDATED RAILROAD COMPANY, from February 1, 1922, to February 1, 1923	1
2433	In the Matter of the hearing on the Motion of the Commission as to the proposed new Local Passenger Tariff of the New YORK, WESTCHESTER & BOSTON RAILWAY COMPANY, identified as P. S. C. 1 N. Y. No. 18, issued October 18, 1919, and effective November 19, 1919	60-156
2511	In the Matter of the Application of the LONG ISLAND RAILROAD COMPANY and the PENNSYLVANIA TUNNEL AND TERMINAL RAILROAD COMPANY, for the approval by the PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT of (1) an agreement dated May 26, 1920, amending the agreement dated June 24, 1912, between the PENNSYLVANIA TUNNEL AND TERMINAL RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, as operating agent for the Tunnel Company, and THE LONG ISLAND RAILROAD COMPANY, for trackage rights into and the use of the Pennsylvania Station, Borough of Manhattan, etc., and (2) an extension of said agreement of June 24, 1912, as amended, from July 1, 1920, to July 1, 1922	160
2528	In the Matter of the Application of the 23RD STREET RAILWAY COMPANY under Section 184 of the Railroad Law, for approval of the Public Service Commission for the First District, for a declaration of abandonment of a portion of the railroad and certain of its franchises, in the Borough of Manhattan, City of New York	221
2564	In the Matter of the Application of THE CITY OF NEW YORK for a determination as to the manner in which Palmetto Street and other streets in the Borough of Queens shall cross tracks of BROOKLYN CITY RAILROAD COMPANY	8
2625	In the Matter of the Application of the EIGHTH AVENUE RAILROAD COMPANY for authorization to issue bonds secured by mortgage on two parcels of its real property to the amount of \$1,200,000	12
2626	In the Matter of the Hearing on motion of the Commission as to REPAIRS, IMPROVEMENTS, CHANGES OR ADDITIONS to the street surface railroad track at 65th Street and Broadway and 71st Street and Broadway and between those points in the Borough of Manhattan	29

TABLE OF CASES REPORTED

CASE NO.		PAGE
2627	In the Matter of the Hearing on the Motion of the Commission upon the regulation, practices, equipment, appliances and service of the INTERBOROUGH RAPID TRANSIT COMPANY	73
2628	In the Matter of the Hearing on Motion of the Commission upon the regulations, practices, equipment, appliances and service of NEW YORK CONSOLIDATED RAILROAD COMPANY, the NEW YORK MUNICIPAL RAILWAY CORPORATION, and LINDLEY M. GARRISON, as Receiver of said NEW YORK CONSOLIDATED RAILROAD COMPANY, and NEW YORK MUNICIPAL RAILWAY CORPORATION	128
2631	In the Matter of the Application of the Board of Estimate and Apportionment of The City of New York, for an order directing THE BROOKLYN CITY RAILROAD COMPANY to change the location of its tracks in Fresh Pond Road between Woodbine Street and Mount Olivet Avenue, in the Borough of Queens	104-170
2635	In the Matter of the Application of THE STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY for permission to move the station located at Bay Terrace, on its railroad line in the Borough and County of Richmond, City and State of New York, to a point about one thousand feet easterly from its present location and to change the name of the said station from Bay Terrace to Rice Manor	115
2637	In the Matter of the Hearing on Motion of the Commission upon the regulations, practices, equipment, appliances and service, maintained and provided by INTERBOROUGH RAPID TRANSIT COMPANY and the MANHATTAN RAILWAY COMPANY	167
2640	In the Matter of the Hearing on the Motion of the Commission as to the propriety of adding "17th Street" to the name of the Broadway Station on the Corona Branch of the Queensboro subway of the INTERBOROUGH RAPID TRANSIT COMPANY	119
2658	In the Matter of the Application of the HAMILTON COMMUNITY COUNCIL to have a new subway station located at 151st Street and Broadway, in the Borough of Manhattan, City of New York	151
2662	In the Matter of the Application of INTERBOROUGH RAPID TRANSIT COMPANY for authority to issue and dispose of \$10,500,000 face amount of Ten Year Unsecured 6% Gold Notes	177
2663	In the Matter of the Application of NEW YORK & QUEENS COUNTY RAILWAY COMPANY for authority to issue 60 equal Car Trust Notes of \$730 each, bearing interest at the rate of 6% per annum, under Section 55 of the Public Service Commission Law, and for approval of the Car Trust Lease	214
	In the Matter of the Tariff Schedules filed by Slaughter W. Huff and Robert C. Lee as Receivers of the property of the NEW	

TRANSIT COMMISSION

CASE NO.		PAGE
	YORK AND QUEENS COUNTY RAILWAY COMPANY, which is subject to the lien of the mortgage originally made by STEINWAY RAILWAY COMPANY OF LONG ISLAND CITY to the State Trust Company, as Trustee, dated April 1, 1892	99

TABLE OF ORDERS QUOTED FROM

1264 & 1380	ORDER dated December 7, 1922, Modifying Final Order dated December 8, 1911, directing certain alterations and changes to be made on the Main Line of the LONG ISLAND RAILROAD COMPANY	213
1727	ORDER of March 28, 1922, approving in part the petition dated and verified February 17, 1922, of THE LONG ISLAND RAILROAD COMPANY, relative to the discontinuance of station at South Street, Jamaica, in Borough of Queens	40
1901	ORDER of April 25, 1922, abrogating paragraph 6 of the Order of January 27, 1916, permitting the LONG ISLAND RAILROAD COMPANY to remove switch and side track connection now maintained upon its property connecting with switch and side track connection on property of J. & T. Adikes and modifying and amending paragraph 2 of said order of January 27, 1916, so as to provide for commencement of construction of elevated switch and side-track connection, etc.	51
2158	ORDER of May 31, 1922, denying the application of THE BRONX TRACTION COMPANY for the approval of declaration of abandonment of portion of route and franchises on Morris Park Avenue from Bronxdale Avenue to Williamsbridge Road, in the Borough of The Bronx, without prejudice to the rights of the Commission to hereafter grant such relief as may appear just and proper	123
2182	ORDER of October 27, 1922, after Rehearing Allowing Pledge of Bonds by INTERBOROUGH RAPID TRANSIT COMPANY of the face value of \$27,570,000	191
2218	ORDER of October 27, 1922, after Rehearing Allowing Pledge of Bonds by INTERBOROUGH RAPID TRANSIT COMPANY of the face value of \$32,032,000	195
2306	ORDER of October 27, 1922, Authorizing Issue of Notes by the INTERBOROUGH RAPID TRANSIT COMPANY of the face value of \$34,330,000	199
2375	ORDER of January 26, 1922, modifying and supplementing the order of the Public Service Commission for the First District adopted by said Commission on August 15, 1919, and adopted by Transit Construction Commissioner on the same date, and the order of the Transit Commission adopted	

TABLE OF ORDERS QUOTED FROM

CASE NO.		PAGE
	May 31, 1921, respecting extension of time for payment of Receiver's Certificates of Indebtedness—BROOKLYN RAPID TRANSIT COS.	4
2433	ORDER of May 2, 1922, allowing the NEW YORK, WESTCHESTER & BOSTON RAILWAY COMPANY, to increase its fare in New York City, from five cents to seven cents	63
	ORDER of July 25, 1922, denying City's application for a re-hearing	158
2511	ORDER of August 23, 1922, approving agreement, dated April 20, 1922, between THE LONG ISLAND RAILROAD COMPANY, THE PENNSYLVANIA TUNNEL AND TERMINAL RAILROAD COMPANY and the PENNSYLVANIA RAILROAD COMPANY, providing for an increase in the monthly rental paid by The Long Island Railroad Company to the PENNSYLVANIA TUNNEL AND TERMINAL RAILROAD COMPANY from \$20,000 per month to \$25,000 per month	162
2528	ORDER dated December 27, 1922, approving abandonment of portion of route and franchises of the 23RD STREET RAILWAY COMPANY	223
2564	CERTIFICATE of Partial Performance of Work of February 21, 1922, certifying as to expenditures, BROOKLYN CITY RAILROAD COMPANY	8
2625	ORDER of February 14, 1922, consenting to Real Estate Mortgages of the EIGHTH AVENUE RAILROAD COMPANY and authorizing issue of bonds	19
2626	ORDER of March 1, 1922, directing THE FORTY-SECOND STREET, MANHATTANVILLE AND ST. NICHOLAS AVENUE RAILWAY COMPANY to make all repairs, improvements, changes or additions to special work connecting its tracks with tracks of THE NINTH AVENUE RAILROAD COMPANY, in the vicinity of 71st Street and Broadway, Manhattan	31
2627	ORDER of May 2, 1922, directing INTERBOROUGH RAPID TRANSIT COMPANY to improve service on its subway lines (Service order "A")	79
	ORDER of May 2, 1922, directing INTERBOROUGH RAPID TRANSIT COMPANY to obtain and have ready for operation 350 new steel cars for use on its subway lines (Service Order "B")	90
2628	SERVICE ORDERS "A" and "B" of July 13, 1922, prescribing additional service and equipment, BROOKLYN RAPID TRANSIT LINES	130, 143
2631	ORDER of May 11, 1922, directing relocation of tracks of THE BROOKLYN CITY RAILROAD COMPANY in Fresh Pond Road between Woodbine Street and Mount Olivet Avenue, in the Borough of Queens. and apportioning expense between The City of New York and the Railroad Company	107

TRANSIT COMMISSION

CASE NO.		PAGE
	ORDER of October 20, 1922, Abrogating Order dated May 11, 1922, directing Relocation of Track of BROOKLYN CITY RAILROAD COMPANY and Apportioning of Expense therefor . . .	172
2635	ORDER of May 11, 1922, denying the application of THE STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY for permission to move the station located at Bay Terrace, on its railroad line in the Borough and County of Richmond, to a point one thousand feet easterly from its present location and to change the name of the said station to Rice Manor . . .	117
2658	ORDER of July 18, 1922, denying the Community Council's application for a new subway station at 151st Street and Broadway, Manhattan . . .	153
2662	FINAL ORDER of October 27, 1922, Authorizing Issue of Notes by INTERBOROUGH RAPID TRANSIT COMPANY of the face value of \$10,500,000 . . .	202
2663	ORDER dated December 7, 1922, authorizing issue of Car Trust Notes and approving Car Trust Lease of the NEW YORK & QUEENS COUNTY RAILWAY COMPANY . . .	216

TABLE OF CASES CITED

Transit Commission:

Hearing on Motion of the Commission upon the Regulations, Practices, Equipment, Appliances and Service of Interborough Rapid Transit Company (Case No. 2627) (see page 73 of this volume)	168
---	-----

Hearing on Motion of the Commission upon Regulations, Practices, Equipment, Appliances and Service of New York Consolidated Railroad Company, the New York Municipal Railway Corporation, and Lindley M. Garrison, as Receiver of said New York Consolidated Railroad Company and New York Municipal Railway Corporation (Case No. 2628) (see page 128 of this volume)	168
--	-----

Public Service Commission for the First District:

In the Matter of the Hearing on Motion of the Commission on the question of alterations and changes in the following grade crossing with the tracks of the Long Island Railroad Company: Hempstead and Jamaica Turnpike (Case 1264) (2 P. S. C. R. [1st Dist., N. Y.] 763) . . .	211
--	-----

Application of the Interborough Rapid Transit Company for authority to execute its proposed First Refunding Mortgage, Securing its Gold Bonds, and for the consent of the Commission to the issuance of certain bonds thereunder. (Case 1614) (4 P. S. C. R. [1st Dist., N. Y.] 105) . . .	191
--	-----

Application of 8th Avenue Railroad Company for authorization to issue Certificate of Indebtedness (Case No. 2321) Vol. I Annual Report of P. S. C. 1st Dist., Year 1918, p. 518 . . .	23
---	----

TABLE OF STATUTES CITED

	PAGE
<i>New York State Courts:</i>	
Adikes <i>v.</i> Long Island Railroad Company, 165 A. D. 221	55
People <i>ex rel.</i> L. I. R. R. Co. <i>v.</i> Public Service Commission, 170 A. D. 429	55
People <i>ex rel.</i> D. & H. Co. <i>v.</i> Stevens, 197 N. Y. 1	27
<i>U. S. District Courts, Southern District:</i>	
Matter of Westinghouse Electric & Manufacturing Company, plaintiff, against Brooklyn Rapid Transit Company, New York Municipal Railway Corporation, and New York Consolidated Railroad Company, defendants,—Consolidated Cause—In Equity E—15—347	4

TABLE OF STATUTES CITED

Public Service Commission Law:

GENERAL: Car Trust Notes and Lease—N. Y. & Q. County Ry. Co.	216
SECTION 8: Abandonment of Route—23rd St. Ry. Co.	224
Discontinuance of Station—L. I. Rd. Co.	40
SECTION 11: Abandonment of Route—23rd St. Ry. Co.	224
Discontinuance of Station—L. I. Rd. Co.	40
SECTION 23: Fares—N. Y., Westchester & Boston Ry. Co.	65
SECTION 27: (Paragraph 2) Side Track and Switch Connection, L. I. R. R. Co.	44
SECTION 28: New Tariff Schedules—Steinway Railways	101
SECTION 29: New Tariff Schedules—Steinway Railways	101
SECTION 49: Service—Manhattan "L" Rds.	168
SECTION 50: Track Repairs—Street Surface Rd. Cos.	36
SECTION 55: Real Estate Mortgages—8th Ave. Rd. Co.	27

Railroad Law:

SECTION 8: Subdivision 10: Real Estate Mortgages—8th Ave. Rd. Co.	26
SECTION 54: Discontinuance of Station—L. I. Rd. Co.	40
SECTION 90: Grade Crossings—Rapid Transit & Street Rd.	11
SECTION 94: Subdivision 2: Grade Crossings—Rapid Transit & Street Rd.	11
SECTION 148: Abandonment of Route—23rd St. Ry. Co.	222
SECTION 184: Abandonment of Route—23rd St. Ry. Co.	221
Abandonment of Route—Bronx Traction Co.	121
SECTION 192A: Relocation of Track—Brooklyn City Rd. Co.	110

New York State Constitution:

ARTICLE III: Relocation of Track—Brooklyn City Rd. Co.	112
SECTION 18: Fares—N. Y., Westchester & Boston Ry. Co.	67

Laws of 1854:

CHAPTER 140: Track Repairs—Street Surface Rd. Cos.	34
--	----

Laws of 1860:

CHAPTER 411: Track Repairs—Street Surface Rd. Cos.	34
--	----

TRANSIT COMMISSION

	PAGE
<i>Laws of 1884:</i>	
CHAPTER 252, Section 14: Track Repairs—Street Surface Rd. Cos.	34
<i>Laws of 1890:</i>	
CHAPTER 565: Relocation of Track—Brooklyn City Rd. Co.	111
<i>Laws of 1921:</i>	
CHAPTER 134: Abandonment of Route—23rd St. Ry. Co.	224
Fares—N. Y. Westchester & Boston Ry. Co.	64
CHAPTER 335: Fares—N. Y., Westchester & Boston Ry. Co.	64
CHAPTER 699: Relocation of Track—Brooklyn City Rd. Co.	107, 172

COMPANIES INDEX

BROADWAY & SEVENTH AVENUE RD. CO.:	
Real Estate Mortgages—8th Avenue Railroad Co.	23
(THE) BRONX TRACTION COMPANY:	
Abandonment of Route	121
BROOKLYN CITY RAILROAD COMPANY:	
Grade Crossings—Rapid Transit & Street Rd.	8
Relocation of Track	104, 170
(THE) BROOKLYN HEIGHTS RAILROAD COMPANY:	
Relocation of Track, Brooklyn City Rd. Co.	109, 171
BROOKLYN RAPID TRANSIT COMPANY:	
Receiver's Certificate—Brooklyn R. T. Cos.	4
Service Orders—B. R. T. Lines	150
EIGHTH AVENUE RAILROAD COMPANY:	
Real Estate Mortgages	12
(THE) FORTY-SECOND STREET, MANHATTANVILLE & ST. NICHOLAS AVENUE RAILWAY COMPANY:	
Track Repairs—Street Surface Rd. Cos.	31
HOUSTON, WEST STREET & PAVONIA FERRY RAILROAD COMPANY:	
Track Repairs—Street Surface Rd. Cos.	34
INTERBOROUGH-CONSOLIDATED CORPORATION:	
Bond and Note Issues—I. R. T. Co.	205
INTERBOROUGH-METROPOLITAN COMPANY:	
Bond and Note Issues—I. R. T. Co.	208
INTERBOROUGH RAPID TRANSIT COMPANY:	
Bond and Note Issues	176
New Subway Station, 151st Street	153
Service Orders	73
Service Orders—B. R. T. Lines	145
Service—Manhattan "L" Rds.	167
Station Name—Queensborough Subway	119
LONG ISLAND RAILROAD COMPANY:	
Discontinuance of Station	39
Grade Crossings	211
Side-Track & Switch Connection	44
Trackage and Terminal Rights—Penn. Station	160

COMPANIES INDEX

	PAGE
MANHATTAN RAILWAY COMPANY:	
Bond and Note Issues—I. R. T. Co.	207
Service—Manhattan "L" Rds.	167
METROPOLITAN STREET RAILWAY COMPANY:	
Real Estate Mortgages—8th Ave. Rd. Co.	23
Track Repairs—Street Surface Rd. Cos.	34
NEW YORK & QUEENS COUNTY RAILWAY COMPANY:	
Car Trust Notes and Lease	214
Tariff Schedules—Steinway Railways	99
(THE) NEW YORK CENTRAL RAILROAD COMPANY:	
Fares—N. Y., Westchester & Boston Ry. Co.	71
NEW YORK CONSOLIDATED RAILROAD COMPANY:	
Receiver's Certificates—Brooklyn R. T. Cos.	1
Service—Manhattan "L" Rds.	168
Service Orders—B. R. T. Lines	128
NEW YORK MUNICIPAL RAILWAY CORPORATION:	
Receiver's Certificates—Brooklyn R. T. Cos.	1
Service—Manhattan "L" Rds.	168
Service Orders—B. R. T. Lines	128
NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY:	
Abandonment of Route—Bronx Traction Co.	124
Fares—N. Y., Westchester & Boston Ry. Co.	71
Trackage and Terminal Rights—Penn. Station	165
NEW YORK RAILWAYS COMPANY:	
Abandonment of Route—23rd St. Ry. Co.	225
Real Estate Mortgages—8th Ave. Rd. Co.	23
Track Repairs—Street Surface Rd. Cos.	35
NEW YORK, WESTCHESTER & BOSTON RAILWAY COMPANY:	
Fares	60, 155
NINTH AVENUE RAILROAD COMPANY:	
Track Repairs—Street Surface Rd. Cos.	31
(THE) PENNSYLVANIA RAILROAD COMPANY:	
Trackage and Terminal Rights—Penn. Station	160
PENNSYLVANIA TUNNEL AND TERMINAL RAILROAD COMPANY:	
Trackage and Terminal Rights—Penn. Station	160
SIXTH AVENUE RAILROAD COMPANY:	
Real Estate Mortgages—8th Ave. Rd. Co.	23
(THE) STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY:	
Removal of Station	115
STEINWAY RAILWAY COMPANY OF LONG ISLAND CITY:	
Car Trust Notes and Lease—N. Y. & Q. County Ry. Co.	220
Tariff Schedules	99
THIRD AVENUE RAILWAY COMPANY:	
Track Repairs—Street Surface Rd. Cos.	31
TWENTY-THIRD STREET RAILWAY COMPANY:	
Abandonment of Route	221
UNION RAILWAY COMPANY OF NEW YORK CITY:	
Abandonment of Route—Bronx Traction Co.	123

TRANSIT COMMISSION

LOCALITIES INDEX

	PAGE
<i>The City of New York:</i>	
GENERAL: Fares—N. Y., Westchester & Boston Railway Co.	65
Service Orders—B. R. T. Lines	130
<i>Borough of Manhattan:</i>	
GENERAL: Bond and Note Issues, I. R. T. Co.	205
Abandonment of Route—23rd St. Ry. Co.	221
Service—Manhattan "L" Rds.	169
AMSTERDAM AVENUE: New Subway Station, 151st St.—I. R. T. Co.	154
Track Repairs—Street Surface Rd. Cos.	32
BROADWAY: New Subway Station, 151st St.—I. R. T. Co.	151
Real Estate Mortgages—8th Ave. Rd. Co.	23
Service Orders—B. R. T. Lines	145
Track Repairs—Street Surface Rd. Cos.	29
CANAL STREET: Real Estate Mortgages—8th Ave. Rd. Co.	23
Service Orders—B. R. T. Lines	134
CENTRAL PARK WEST: New Subway Station, 151st St.—I. R. T. Co.	154
CENTRE STREET: Service Orders—B. R. T. Lines	145
CHAMBERS STREET: Real Estate Mortgages—8th Ave. Rd. Co.	23
Service Orders—B. R. T. Lines	134
CHURCH STREET: Real Estate Mortgages—8th Ave. Rd. Co.	23
CITY HALL: Service Orders—B. R. T. Lines	131
Service Orders—I. R. T. Co.	83
COLLEGE PLACE: Real Estate Mortgages—8th Ave. Rd. Co.	23
DYCKMAN STREET: Service Orders—I. R. T. Co.	81
ESSEX STREET: Service Orders—B. R. T. Lines	135
GRAND CENTRAL STATION: Abandonment of Route—23rd St. Ry. Co.	222
Service Orders—I. R. T. Co.	94
GRAND CENTRAL TERMINAL: Trackage and Terminal Rights—Penn. Station	165
HARLEM RIVER: Fares—N. Y., Westchester & Boston Ry. Co.	63
Real Estate Mortgages—8th Ave. Rd. Co.	25
HUDSON STREET: Real Estate Mortgages—8th Ave. Rd. Co.	23
LENOX AVENUE: Service Orders—I. R. T. Co.	81
MCCOMB'S DAM BRIDGE: Real Estate Mortgages—8th Ave. Rd. Co.	23
MCCOMB'S DAM ROAD: Real Estate Mortgages—8th Ave. Rd. Co.	23
MANHATTAN BRIDGE: Service Orders—B. R. T. Lines	145
PARK ROW: Service Orders—B. R. T. Lines	135
PENNSYLVANIA STATION: Abandonment of Route—23rd St. Ry. Co.	222
Trackage and Terminal Rights	160
PENNSYLVANIA TERMINAL: Trackage and Terminal Rights—Penn. Station	163
QUEENSBORO BRIDGE: Abandonment of Route—23rd St. Ry. Co.	222
SOUTH FERRY: Service Orders—I. R. T. Co.	94
TENTH AVENUE: Track Repairs—Street Surface Rd. Cos.	32
TIMES SQUARE: Service Orders—B. R. T. Lines	131

LOCALITIES INDEX

	PAGE
VESEY STREET: Real Estate Mortgages—8th Ave. Rd. Co.	23
WASHINGTON HEIGHTS: New Subway Station, 151st St.—I. R. T. Co.	153
WEST BROADWAY: Real Estate Mortgages—8th Ave. Rd. Co.	23
WHITEHALL STREET: Service Orders—B. R. T. Lines	139
WILLIAMSBURG BRIDGE: Service Orders—B. R. T. Lines	146
1ST AVENUE: Abandonment of Route—23rd St. Ry. Co.	222
2ND AVENUE: Abandonment of Route—23rd St. Ry. Co.	222
8TH AVENUE: New Subway Station, 151st St.—I. R. T. Co.	154
Real Estate Mortgages—8th Ave. Rd. Co.	20
9TH AVENUE: New Subway Station, 151st St.—I. R. T. Co.	154
14TH STREET: Service Orders—B. R. T. Lines	139
23RD STREET: Abandonment of Route—23rd St. Ry. Co.	222
28TH STREET: Abandonment of Route—23rd St. Ry. Co.	222
29TH STREET: Abandonment of Route—23rd St. Ry. Co.	222
33RD STREET: Service Orders—I. R. T. Co.	83
34TH STREET: Abandonment of Route—23rd St. Ry. Co.	222
49TH STREET: Real Estate Mortgages—8th Ave. Rd. Co.	20
50TH STREET: Real Estate Mortgages—8th Ave. Rd. Co.	20
Service Orders—I. R. T. Co.	81
57TH STREET: Service Orders—B. R. T. Lines	131
59TH STREET: Abandonment of Route—23rd St. Ry. Co.	222
Real Estate Mortgages—8th Ave. Rd. Co.	22
Service Orders—I. R. T. Co.	81
64TH STREET: Track Repairs—Street Surface Rd. Cos.	33
65TH STREET: Track Repairs—Street Surface Rd. Cos.	29
71ST STREET: Track Repairs—Street Surface Rd. Cos.	29
72ND STREET: Track Repairs—Street Surface Rd. Cos.	33
96TH STREET: Service Orders—I. R. T. Co.	80
122ND STREET: New Subway Station, 151st St.—I. R. T. Co.	155
137TH STREET: New Subway Station, 151st St.—I. R. T. Co.	155
Service Orders—I. R. T. Co.	80
145TH STREET: New Subway Station, 151st St.—I. R. T. Co.	153
Service Orders—I. R. T. Co.	81
148TH STREET: Service Orders—I. R. T. Co.	91
150TH STREET: New Subway Station, 151st St.—I. R. T. Co.	154
151ST STREET: New Subway Station, 151st St.—I. R. T. Co.	151
155TH STREET: Real Estate Mortgages—8th Ave. Rd. Co.	23
156TH STREET: Real Estate Mortgages—8th Ave. Rd. Co.	25
157TH STREET: New Subway Station, 151st St.—I. R. T. Co.	153
162ND STREET: New Subway Station, 151st St.—I. R. T. Co.	155
168TH STREET: New Subway Station, 151st St.—I. R. T. Co.	155
175TH STREET: New Subway Station, 151st St.—I. R. T. Co.	155

Borough of The Bronx:

BRONXDALE AVENUE: Abandonment of Route—Bronx Traction Company	121
BRONXDALE ROAD: Abandonment of Route—Bronx Traction Company	124

TRANSIT COMMISSION

	PAGE
BRONX PARK: Service Orders—I. R. T. Co.	80
HUNTS POINT AVENUE: Service Orders—I. R. T. Co.	83
JEROME AVENUE: Service Orders—I. R. T. Co.	91
KINGSBRIDGE ROAD: Service Orders—I. R. T. Co.	82
MORRIS AVENUE: Abandonment of Route—Bronx Traction Com- pany	127
MORRIS PARK AVENUE: Abandonment of Route—Bronx Traction Company	121
NEILL AVENUE: Abandonment of Route—Bronx Traction Company	124
PELHAM BAY PARKWAY: Service Orders—I. R. T. Co.	83
SACKETT AVENUE: Abandonment of Route—Bronx Traction Com- pany	124
TREMONT AVENUE: Abandonment of Route—Bronx Traction Com- pany	126
WEST FARMS ROAD: Abandonment of Route—Bronx Traction Com- pany	126
WHITE PLAINS AVENUE: Service Orders—I. R. T. Co.	82
WHITE PLAINS ROAD: Abandonment of Route—Bronx Traction Company	126
WILLIAMSBRIDGE ROAD: Abandonment of Route—Bronx Traction Company	121
138TH STREET: Service Orders—I. R. T. Co.	83
149TH STREET: Service Orders—I. R. T. Co.	82
180TH STREET EAST: Service Orders—I. R. T. Co.	82
215TH STREET: Service Orders—I. R. T. Co.	80
241ST STREET: Service Orders—I. R. T. Co.	82
242ND STREET: Service Orders—I. R. T. Co.	80
<i>Borough of Brooklyn:</i>	
GENERAL: Service—Manhattan "L" Rds.	169
ATLANTIC AVENUE: Service Orders—B. R. T. Lines	134
Service Orders—I. R. T. Co.	80
BAY PARKWAY: Service Orders—B. R. T. Lines	131
BAY RIDGE: Service Orders—B. R. T. Lines	138
BRIGHTON BEACH: Service Orders—B. R. T. Lines	134
BROADWAY: Service Orders—B. R. T. Lines	134
CRESCENT STREET: Service Orders—B. R. T. Lines	134
DEKALB AVENUE: Service Orders—B. R. T. Lines	146
EASTERN DISTRICT: Service Orders—B. R. T. Lines	146
EASTERN PARKWAY: Service Orders—B. R. T. Lines	134
FLATBUSH: Service Orders—B. R. T. Lines	146
FLATBUSH AVENUE: Service Orders—I. R. T. Co.	80
FRANKLIN AVENUE: Service Orders—B. R. T. Lines	135
FULTON FERRY: Service Orders—B. R. T. Lines	135
FULTON STREET: Service Orders—B. R. T. Lines	135
GRANT AVENUE: Service Orders—B. R. T. Lines	135
HIGH STREET: Service Orders—B. R. T. Lines	136
KINGS COUNTY BRIDGE: Service Orders—B. R. T. Lines	135

LOCALITIES INDEX

	PAGE
KINGS HIGHWAY: Service Orders—B. R. T. Lines . . .	132
LEFFERTS AVENUE: Service Orders—B. R. T. Lines . . .	135
LEXINGTON AVENUE: Service Orders—B. R. T. Lines . . .	137
MARCY AVENUE: Service Orders—B. R. T. Lines . . .	134
METROPOLITAN AVENUE: Service Orders—B. R. T. Lines . . .	134
MONTAGUE STREET: Service Orders—B. R. T. Lines . . .	146
MYRTLE AVENUE: Service Orders—B. R. T. Lines . . .	134
PACIFIC STREET: Service Orders—B. R. T. Lines . . .	131
PENNSYLVANIA AVENUE: Service Orders—I. R. T. Co. . . .	80
PROSPECT PARK: Service Orders—B. R. T. Lines . . .	139
ROCKAWAY PARKWAY: Service Orders—B. R. T. Lines . . .	134
St. MARK'S AVENUE: Service Orders—B. R. T. Lines . . .	138
STILLWELL AVENUE: Service Orders—B. R. T. Lines . . .	131
UTICA AVENUE: Service Orders—I. R. T. Co. . . .	80
WASHINGTON AVENUE: Service Orders—B. R. T. Lines . . .	136
WYCKOFF AVENUE: Service Orders—B. R. T. Lines . . .	136
4TH AVENUE: Service Orders—B. R. T. Lines . . .	145
5TH AVENUE: Service Orders—B. R. T. Lines . . .	138
9TH AVENUE: Service Orders—B. R. T. Lines . . .	138
36TH STREET: Service Orders—B. R. T. Lines . . .	146
62ND STREET: Service Orders—B. R. T. Lines . . .	131
65TH STREET: Service Orders—B. R. T. Lines . . .	138
86TH STREET: Service Orders—B. R. T. Lines . . .	133
111TH STREET: Service Orders—B. R. T. Lines . . .	134
168TH STREET: Service Orders—B. R. T. Lines . . .	134
<i>Borough of Queens:</i>	
GENERAL: Grade Crossings—L. I. Rd. Co. . . .	213
Relocation of Track, Bklyn City Rd. Co. . . .	173
ADRIATIC STREET: Relocation of Track—Brooklyn City Railroad Company . . .	110
ALBURTIS AVENUE: Service Orders—I. R. T. Co. . . .	84
ARCHER AVENUE: Side Track & Switch Connection, L. I. R. R. Co. . . .	58
ARCHER PLACE: Side Track & Switch Connection, L. I. R. R. Co. . . .	51
ARCHER STREET: Side Track & Switch Connection, L. I. R. R. Co. . . .	58
ARCTIC AVENUE: Relocation of Track—Brooklyn City Railroad Co. . . .	110
ASTORIA: Abandonment of Route—23rd St. Ry. Co. . . .	222
Station Name, Queensboro Subway . . .	120
BALTIC STREET: Relocation of Track—Brooklyn City Railroad Co. . . .	110
BAYLIS AVENUE: Grade Crossings—L. I. Rd. Co. . . .	211
BENNETT AVENUE: Grade Crossings—L. I. Rd. Co. . . .	211
BLEECKER STREET: Relocation of Track—Brooklyn City Railroad Co. . . .	110
BROADWAY: Station Name, Queensboro Subway . . .	119
CEDAR MANOR: Discontinuance of Station—L. I. Rd. Co. . . .	41
CORONA: Abandonment of Route—23rd St. Ry. Co. . . .	222
Station Name, Queensboro Subway . . .	119
CLERMONT AVENUE: Relocation of Track—Brooklyn City Railroad Company . . .	110

TRANSIT COMMISSION

	PAGE
CREED AVENUE: Grade Crossings—L. I. Rd. Co.	211
CREED BOULEVARD: Grade Crossings—L. I. Rd. Co.	212
DITMARS AVENUE: Service Orders—I. R. T. Co.	84
ELLIOTT STREET: Relocation of Track—Brooklyn City Railroad Co.	110
ELMHURST: Station Name, Queensboro Subway	120
EVELIN STREET: Relocation of Track—Brooklyn City Railroad Co.	110
FAIRVIEW AVENUE: Grade Crossings—Rapid Transit & Street Rd.	8
FAR ROCKAWAY: Discontinuance of Station—L. I. Rd. Co.	41
FLUSHING AVENUE: Relocation of Track—Brooklyn City Railroad Co.	108
FOLEY AVENUE: Side Track & Switch Connection, L. I. R. R. Co.	52
FOREST AVENUE: Grade Crossings—Rapid Transit & Street Rd.	8
FRESH POND ROAD: Relocation of Track—Brooklyn City Railroad Co.	104, 170
Service Orders—B. R. T. Lines	135
FULTON STREET: Side Track & Switch Connection, L. I. R. R. Co.	51
GATES AVENUE: Relocation of Track—Brooklyn City Railroad Co.	110
GRAND STREET: Relocation of Track—Brooklyn City Railroad Co.	111
GROVE STREET: Relocation of Track—Brooklyn City Railroad Co.	110
GUILFORD STREET: Side Track & Switch Connection, L. I. R. R. Co.	52
HEMPSTEAD AVENUE: Grade Crossings—L. I. Rd. Co.	212
HEMPSTEAD TURNPIKE: Grade Crossings—L. I. Rd. Co.	211
JAMAICA: Discontinuance of Station—L. I. Rd. Co.	39
Service Orders—B. R. T. Lines	146
Side Track & Switch Connection, L. I. R. R. Co.	44
JAMAICA TURNPIKE: Grade Crossings—L. I. Rd. Co.	211
LINDEN STREET: Relocation of Track—Brooklyn City Railroad Co.	110
LONG BEACH: Discontinuance of Station—L. I. Rd. Co.	41
LONG ISLAND CITY: Abandonment of Route—23rd St. Ry. Co.	222
Tariff—Steinway Railway Co.	100
MADISON AVENUE: Grade Crossings—L. I. Rd. Co.	211
METROPOLITAN AVENUE: Relocation of Track—Brooklyn City Railroad Co.	109
MOUNT OLIVET AVENUE: Relocation of Track, Bklyn. City Rd. Co.	170
PALMETTO STREET: Grade Crossings—Rapid Transit & Street Rd.	8
PUTNAM AVENUE: Grade Crossings—Rapid Transit & Street Rd.	8
QUEENSBORO PLAZA: Service Orders—B. R. T. Lines	131
SOUTH STREET: Discontinuance of Station—L. I. Rd. Co.	39
SUTPHIN BOULEVARD: Side Track & Switch Connection, L. I. R. R. Co.	52
TYNDALL STREET: Side Track & Switch Connection, L. I. R. R. Co.	51
UNION HALL STREET: Discontinuance of Station—L. I. Rd. Co.	41
WERTLAND AVENUE: Grade Crossings—L. I. Rd. Co.	211
WOODBINE STREET: Relocation of Track, Bklyn. City Rd. Co.	170
FIRST WARD: Car Trust Notes and Lease—N. Y. & Q. County Ry. Co.	216
SECOND WARD: Car Trust Notes and Lease—N. Y. & Q. County Ry. Co.	216

LOCALITIES INDEX

	PAGE
THIRD WARD: Car Trust Notes and Lease—N. Y. & Q. County Ry. Co.	216
148TH STREET: Side Track & Switch Connection, L. I. R. R. Co.	58
212TH STREET: Grade Crossings—L. I. Rd. Co.	212
218TH STREET: Grade Crossings—L. I. Rd. Co.	212
222ND STREET: Grade Crossings—L. I. Rd. Co.	212

DETERMINATIONS OF THE COMMISSION PASSED UPON BY COURTS

Decisions relative to the constitutionality of the laws creating and empowering the Transit Commission to function.

The Opinion below affirms Orders of the Appellate Division, First Department, and requires the Board of Estimate and Apportionment of The City of New York to honor requisitions of the Transit Commission for moneys for the purpose of enabling it to properly perform the duties imposed upon it by the Public Service Commission Law as amended to January 1, 1922. (See 198 App. Div. 205.)

COURT OF APPEALS,

STATE OF NEW YORK.

Decided January 17, 1922.

(232 N. Y. 377.)

In the matter of the application of GEORGE MCANENY, *et al.*, constituting the Transit Commission, etc., respondents, *v.* BOARD OF ESTIMATE AND APPORTIONMENT OF THE CITY OF NEW YORK, appellant.

Appeal from two orders of the Appellate Division, First Department directing the Board of Estimate and Apportionment of the City of New York to make certain appropriations for expenses, etc., of the Transit Commission.

Hiram W. Johnson for appellant;

Francis M. Scott and *Charles A. Collin* for respondents.

McLAUGHLIN, J.—In 1921 the Legislature passed chapter 134 amending the Public Service Commissions Law in certain important particulars and added thereto article 6 (secs. 105-111). The act is entitled: "An Act to amend the public service commissions law, in relation to creating the public service commission and the transit commission, defining the jurisdiction, powers and duties of such commissions, and abolishing the public service commission of the first district, the public service commission of the second district and the office of transit construction commissioner."

Section 1 provides that the title of chapter 480 of the Laws of 1910 "is hereby amended to read as follows: An act in relation to the public service commission and the transit commission, constituting chapter forty-eight of the consolidated laws." The act was amended in some particulars by chapter 335 of the Laws of 1921.

It is unnecessary to consider the various amendments, it being sufficient for the determination of the question presented by this appeal to confine the discussion to the validity of so much of the act as is challenged by the appellant. It abolishes the Public Service Commission for the First District and creates in its place a transit commission, consisting of three persons, to be appointed by the governor by and with the consent of the Senate. It provides: "There shall be a transit commission for cities containing a population of more than one million inhabitants, according to the last preceding federal census or state enumeration, which shall possess the powers and duties hereinafter specified, and also all powers necessary or proper to enable it to carry out the purposes of this chapter" (section 4-a). The jurisdiction of the commission is specifically set forth (section 5-a). The salaries of the commissioners, secretary and counsel are to be paid monthly by the state treasurer upon the order of the comptroller, out of funds provided therefor. All other salaries and expenses of the commission are to be paid

DECISIONS BY COURTS

by the city in which such commission has jurisdiction. The board of estimate and apportionment, or other board or public body on which is imposed a duty, and in which is vested the power of making appropriations of public moneys for the purposes of the city government in such city shall from time to time on requisition duly made by the commission appropriate such sums of money as the commission shall certify to be necessary to properly enable it to perform the duties imposed upon it. "Such appropriation shall be made forthwith upon presentation of such a requisition without revision or reduction and without the imposition of any conditions or limitations by such board or body, and such appropriation by it is hereby declared to be a ministerial act. If such board or body shall fail to appropriate such amount as such transit commission shall deem requisite and necessary, such commission may apply to the Appellate Division of the Supreme Court in the First Judicial Department, on notice to such board or body, for an order requiring such board or body to make such appropriation" (sec. 14, subdiv. 2).

The transit commission delivered to the Board of Estimate and Apportionment of the City of New York a requisition under the act for \$360,895.78, "which sum said transit commission hereby certifies is necessary to properly enable it to do and perform, or cause to be done and performed, from April 25, 1921, to June 30, 1921, the duties imposed upon said commission by said law." The commission also delivered at the same time another requisition for \$1,083,327, "which sum said transit commission hereby certifies is necessary to properly enable it to do and perform, or cause to be done and performed, for the six months ending December 31, 1921, the duties imposed upon said commission by said law."

These requisitions not having been honored by the board of estimate and apportionment, the transit commission applied to the Appellate Division, First Department, on notice for an order requiring the board to make such appropriations. The motions in each case were granted and orders entered to that effect, from which the board appealed to this court.

The validity of these orders, both of which were argued at the Appellate Division and in this court together, and will be so considered by me, is attacked upon various grounds, which, in the last analysis, resolves itself into an assertion that the entire act under which they were made is unconstitutional. The principal, and substantially the main attack, is upon an alleged violation of article 10, section 2; article 12, section 2, and article 3, section 18, of the state constitution.

Article 10, section 2, provides that, "All city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose."

Article 12, section 2, classifies the cities of the state according to population as determined by the last state enumeration as from time to time made, as follows: "The first class includes all cities having a population of one hundred and seventy-five thousand or more; the second class, all cities having a population of fifty thousand and less than one hundred and seventy-five thousand; the third class, all other cities. Laws relating to the property, affairs or government of cities, and the several departments thereof, are divided into general and special city laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section." Then follows a provision to the effect that after a special city law "has been passed by both branches of the Legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of such city, and within fifteen days thereafter the

TRANSIT COMMISSION

mayor shall return such bill to the house from which it was sent. * * *

with a statement that it is either accepted or rejected.

Article 3, section 18, provides, among other things, that "the Legislature shall not pass a private or local bill in any of the following cases * * *. Granting to any corporation, association or individual the right to lay down railroad tracks * * *. The Legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which, in its judgment, may be provided for by general laws."

In considering whether an act of the Legislature be constitutional, the history connected with its origin must be taken into account. The Public Service Commissions Law was passed in 1907 (chap. 429). It took the place of the Rapid Transit Act passed in 1891 (chap. 4). Both of these acts, as originally passed, have been amended from time to time down to the legislative session of 1921. The Public Service Commissions Law provided that the jurisdiction and powers of commissioners referred to in the Rapid Transit Act should be transferred, first, to five public service commissioners of the first district (Laws of 1907, chap. 429, sec. 5, subd. 6); then to one transit construction commissioner (Laws of 1919, chap. 520), and finally to three transit commissioners (Laws of 1921, chap. 134).

By section 4-a of the act a transit commission is created for cities having a population of over a million inhabitants, according to the last preceding federal census or state enumeration. In this commission is vested the power to regulate railroads and street railroads therein, and there is also given to it all the powers and duties given to the board of rapid transit railroad commissioners, the public service commission of the first district, and the transit construction commissioner; in other words, there was given to the transit commission, by the act under consideration, all of the powers theretofore possessed by bodies having control of rapid transit. In so far as the power has been delegated by the state to a commission created by it, to demand and receive appropriations from the board of estimate and apportionment for the purpose of enabling it to properly perform the duties imposed upon it, I do not believe it can be seriously questioned but what the act is a valid legislative enactment.

We are brought, therefore, directly to a consideration of the validity of the orders appealed from. If such validity alone be considered, then the question presented is a very narrow one, viz. Was it the duty of the board of estimate and apportionment, upon receiving the requisitions from the transit commission, to make the appropriations requested? To this question there can, as it seems to me, be but one answer. It was its duty to do so. The act so declares. In making the appropriations the board acts ministerially. It has no discretion as to the amount to be appropriated. The purpose of this provision in the act is obvious. It is to prevent the board of estimate and apportionment from defeating the purposes of the act by withholding appropriations. The board having neglected or refused to make the appropriations called for, the commission was authorized to apply to the court for what in effect was a peremptory mandamus to compel it to do so.

It is suggested that this provision of the act which permits the commission to apply to the Appellate Division where the board neglects and refuses to make appropriations, for an order compelling it to do so makes the act unconstitutional, in that it deprives the court of discretion; that it must grant the order in any event. But this is not so. It may grant or refuse the order in the proper exercise of its discretion. Where a public officer or board is under a legal obligation to do something and refuses to act, then it becomes the duty of the court, on a proper application, in the exercise of its discretion, to compel action. The purpose of the commission in asking for the appropriation, or to what use the money appropriated is to be put, does not concern the board. As we'll might a register of deeds

DECISIONS BY COURTS

of conveyance refuse to record a deed until the purpose of the one seeking to have it recorded has been disclosed, as for the board of estimate and apportionment, under this act, to refuse to make the appropriation until the purpose of the commission be disclosed.

It must be borne in mind in this connection that the Legislature has complete control over the finances of the city. It may specify the amount and purpose for which the city's funds are to be used. It can make up the entire city budget for itself, as it did before the board of estimate and apportionment was created. The board, as an agent of the state, was established as a convenient body to estimate the amount which might be required from year to year to pay the city's expenses. But the Legislature did not, by the creation of such board, surrender any of the power which it had as to control or use of the money to be raised. Indeed, there has never been a time when the determination of what these expenses should be has been left wholly to the board; on the contrary, an investigation will disclose that the Legislature has always reserved and freely exercised the power to determine for itself, or by delegation to some other body, what amount should be raised and applied to particular purposes. A large proportion of the city's budget has been and now is composed of what are known as mandatory appropriations, and as to the amount of which the board of estimate and apportionment has no direction. The act under consideration simply adds one more mandatory appropriation to the list. All the act does in this respect is to transfer from one board of legislative creation to another board of like creation, the power to determine how much money shall be appropriated for the purposes specified in the act. This the Legislature could constitutionally do.

I am of the opinion, therefore, upon the record before us, that the orders appealed from were properly made and should be affirmed. I do not care, however, to place my decision solely upon the ground stated. In view of the public interest and the importance which the act bears to the rapid transit situation in the City of New York, it seems to me the principal objections urged against it should be considered for the purpose of determining whether the act for the reasons urged might render it unconstitutional.

The act, in addition to amending the Public Service Commissions Law in certain respects, and in addition to vesting in the transit commission certain regulatory functions, and all the powers and duties under the Rapid Transit Act of 1891, as amended, vests in the transit commission, by article 6, and as a grant of a distinct and independent power, the right and duty to prepare a plan of readjustment for the relief of the emergency which is declared to exist, and which plan shall accomplish, as nearly as may be, three purposes (sec. 106):

1. The combination, rehabilitation, improvement and extension of existing railroads, so that service thereon may be increased and improved to the fullest extent possible.

2. The receipt, as soon as practicable, by the city of sufficient returns from the operation of the railroads, so that the corporate stock or bonds issued by the city for the construction of rapid transit railroads may be exempted in computing the debt incurring power of the city under the constitution of the state.

3. The assuring to the people of the city the continued operation of the railroads at the present or lowest possible fares consistent with the just valuations of the railroads and their safe and economical operation.

The method by which these purposes are to be accomplished is specifically pointed out in section 107, and no plan is to become effective until that section has been complied with.

All the powers and duties under the Rapid Transit Act, and under any other law, and under any contract of the board of rapid transit railroad

TRANSIT COMMISSION

commissioners, of the former public service commission of the first district, as successor to such board of rapid transit railroad commissioners, of the transit construction commissioner, as successor to the powers and duties of such public service commission of the first district, and of the local authority of such city to approve contracts or modifications of contracts under any provision of the Rapid Transit Act, or of any contract heretofore made, are transferred to and vested in the commission, together with such other and necessary powers as may be requisite to the efficient performance of the duties imposed upon the commission by such laws and contracts (sec. 108).

The commission is not authorized to make any new contract or modify any contract for the construction, equipment, maintenance or operation of the railroads, or any of them, without the approval or consent of the local authority, where such new contract or modification of an existing contract requires it to carry out the authorization by the local authority of corporate stock or bonds of the city in addition to the corporate stock or bonds required to carry out such existing contract, or would result in replacing within the debt limit of the city under the constitution of the state corporate stock or bonds which have been excluded therefrom under orders of the Appellate Division of the Supreme Court, or where such contract or modification of an existing contract adopts or so modifies a route or routes and general plan of a railroad as to require consents therefor under section 18 of article 3 of the constitution of the state (sec. 109).

The foregoing provisions of the act are substantially all which it seems to me are necessary to be considered. In determining whether the act be a valid legislative enactment certain established rules of statutory construction must be kept in mind, some of which are:

(a) That the legislative power is unlimited, except as restrained by the constitution (*People ex rel. Central Trust Co. v. Prendergast*, 202 N. Y., 188); (b) that every act of the Legislature is presumed to be in harmony with the constitution unless the contrary clearly appears (*People ex rel. Simon v. Bradley*, 207 N. Y., 592, 610); (c) that if two constructions be permissible, the one making the act valid must be adopted (*Matter of N. Y. & L. I. Bridge Co. v. Smith*, 148 N. Y., 540; *People v. Lochner*, 177 N. Y., 145); (d) that the Legislature, within constitutional limitations, may retake to itself powers delegated to boards or localities and again assume the direct control of matters pertaining to local government (*People v. Tweed*, 63 N. Y., 202; *People ex rel. McLean v. Flagg*, 46 N. Y., 401; *People ex rel. Morrill v. Board of Supervisors of Queens County*, 112 N. Y., 585); and (e) that a municipal corporation has no power except such as is given to it by the Legislature, and any power thus given may thereafter be modified, diminished or recalled (*City of Worcester v. Worcester Con. St. R'y.* 196 U. S., 539; *City of Pawhuska v. Pawhuska Oil & Gas Co.*, 250 U. S., 394).

First. As to the assertion that the act violates article 10, section 2, of the constitution. What is claimed in this respect is that the transit commissioners are city officers within the meaning of that provision. The assertion is unfounded and has, in effect, been so determined by this court. They are not city officers. The fact that they happen to be at the present time considering rapid transit solely for the City of New York does not necessarily make them officers of that city. The power formerly given to and vested in the rapid transit commissioners was transferred to the public service commissioners and under the act now under consideration it has been transferred to the transit commissioners. The Legislature had a right to make these changes (*People ex rel. Simon v. Bradley*, *supra*). In the case just cited the Legislature created a railway terminal commission for the City of Buffalo. The act was attacked, as here, upon the ground that the commissioners were local officers whom the Legislature under the constitution could not select. The court held otherwise. The decision was

DECISIONS BY COURTS

placed upon the ground that the state, in its sovereign capacity, might, subject to constitutional limitations, resume powers delegated to localities and either by itself or through an agent, directly control matters of local government. It was there pointed out that the commissioners were not only new officers, but their duties were new, even though they included some duties which had theretofore been performed by city officers.

This decision is applicable to the commissioners appointed by the act under consideration. The office of transit commissioner, whether regarded as a state or city office, is essentially a *new office*, to which are attached *new duties*, with *increased powers* over those given to the rapid transit commissioners, the public service commissioners and the transit construction commissioner. The commission is given the power to prepare and put into operation a plan for readjustment of transit conditions in the City of New York. The powers given are broad and extensive, and sufficient to impose upon the commission the duty to reorganize the whole transit situation in such city. The members of the commission are *new officers*, not only in name, but in fact. Their duties are essentially new duties, although they include some duties theretofore performed by other boards or officers. The office of transit commissioner being a new office, the Legislature could constitutionally fill the same by designating the persons to act as commissioners (*People ex rel. Simon v. Bradley*, *supra*; *Matter of Morgan v. Furey*, 186 N. Y., 202; *Sun Printing & Publishing Ass'n v. Mayor, etc.*, of N. Y., 8 App. Div., 230, *aff'd* 152 N. Y. 257; *People ex rel. Metropolitan St. R'y v. State Board of Tax Commissioners*, 174 N. Y. 417).

Second. It is next urged that the act is unconstitutional in that it violates article 12, section 2, the claim in this respect being that the act is a special city law, since it does not apply to all cities of the first class, and could not therefore become a valid legislative enactment because it was not transmitted to the Mayor of the City of New York before it was passed. If the act be a special city law, then the claim is well founded. I am of the opinion, however, that it is not a special city law, and this court, in effect, so decided in *Admiral Realty Co. v. City of N. Y.* (206 N. Y., 110, 140). It is true that in that case the statute under consideration was the Rapid Transit Act, which became a law before this provision of the constitution went into effect, but the decision of this court, as appears from the opinion delivered, was not put solely upon that ground. Judge Hiscock (now Chief Judge), who wrote for the majority of the court, said: "In the second place, the act is not one of those contemplated by the provision in question. The latter contemplates laws which relate to municipal property and affairs, and which may be described, as the provision does describe them, as 'city' laws. To come within the precise provision which is invoked here it would be necessary to hold that the Rapid Transit Act was 'a special city law.' It seems to me that this term could not be regarded as a reasonable description of the statute before us. It was adopted not only for the benefit of the cities which of course would be effected, but of the public at large, and it confers broad powers, including that of the granting of franchises. It is a much more general law than is contemplated by the provision in question (*People ex rel. Einsfeld v. Murray*, 149 N. Y., 367; *Matter of Henneberger*, 155 N. Y., 420)."

The words quoted are as applicable to the present case as they were to the *Admiral Realty* case, and the decision there made is controlling here.

Third. It is claimed that the act violates article 3, section 18, of the constitution, the contention being that the act applies only to cities having a population of over one million; that the powers specified in the act are to be exercised and carried out only by the transit commissioners of the first district, which includes only the City of New York; that New York is the only city of the state having a population of over one million, and it therefore follows that the act is limited to such city and becomes a local law.

TRANSIT COMMISSION

This reasoning is plausible, but fallacious. The act is general in terms. It applies to *all* cities in the state having a population of a million or more. It may be conceded that at the present time it is applicable only to the City of New York, but if so, it by no means follows that it was intended only for that city, since there may and probably will in the near future, be one or more cities to which it will be applicable. Certainly there is no conclusive presumption to the contrary.

Rapid transit for the City of New York has for many years been a matter of public interest affecting not only the people of that city, but of the whole state. It has been generally regarded as a state affair. The history of legislation on the subject shows it. The Rapid Transit Act (Laws of 1891, chap. 4) appointed as commissioners persons in office under a former act. The Act of 1894 (chap 572) named five commissioners. The act was held to be constitutional (*Sun Printing & Pub. Ass'n v. Mayor, etc., of N. Y., supra*). Power to fill vacancies in the board of rapid transit commissioners was given to the mayor (Laws of 1906, chap. 472). In 1907 (chap. 429) this power was taken from the mayor and given to the governor of the state, and the power which had theretofore vested in the rapid transit commission was transferred to a newly created commission. The same act provided that the expenses of the commission incident to rapid transit construction in the City of New York should be paid by that city. That act was held valid (*Gubner v. McClellan*, 130 App. Div., 716). In 1919 (chap. 520) the Public Service Commissions Law was amended by substituting in the place of the commissioners therein provided for one transit construction commissioner to be appointed by the governor of the state, to whom was transferred all the powers and duties of the former rapid transit board or any other board or body having to do with rapid transit in the City of New York; and in 1921 the act under consideration was passed, by which all the powers theretofore lodged in any board or body were transferred to the transit commission, together with increased powers, and three commissioners were named instead of one. All of the legislation bearing on the subject has for many years recognized that a duty rested upon the Legislature to provide for rapid transit, such duty to be performed by itself or by an agent designated for the purpose, a function which the state, in its sovereign capacity, had a right to exercise irrespective of the city authorities, since it concerned the whole state just as much as the maintenance of highways or the management of other public utilities.

The act, as I have indicated, is general in its terms and applicable to all cities of a certain population. In my opinion it is a valid legislative enactment and not an act of local legislation (*Admiral Realty Co. v. City of N. Y., supra*; *Matter of N. Y. El. RR.*, 70 N. Y., 327; *Matter of Church*, 92 N. Y., 1; *People ex rel. N. Y. Electric Lines Co. v. Squire*, 107 N. Y., 593; *Matter of Henneberger, supra*).

Several other questions were argued, but they do not seem to me to be of sufficient importance, in disposing of the present appeal, to be here considered.

The orders appealed from should be affirmed, with costs.

HOGAN, CARDOZO and CRANE, JJ., concur in the result upon the ground that chapter 134 of the Laws of 1921, even if it could be held to be unconstitutional and void in some particulars or contingencies, is not unconstitutional and void in its entirety; that provision for the financial necessities of the transit commissions, therefore, necessary; section 14 of the act imposing upon the board of estimate and apportionment the duty to honor the requisition of the commission, and vesting the Appellate Division with jurisdiction to enforce compliance with that duty is a valid exercise of legislative power; and that the orders under review are, therefore, right and must be affirmed; but they reserve their judgment upon the question how far the rights of the City of New York in railroads which it owns may be divested

DECISIONS BY COURTS

or modified under article 6 of the act until that article has been passed in conformity with article 12, section 2, of the constitution of the state, since a decision as to the scope of the last mentioned section is not necessary to the determination of this appeal, and may be affected by circumstances and contingencies which are now imperfectly disclosed.

HISCOCK, Ch.J., POUND and ANDREWS, JJ., concur with McLAUGHLIN, J.; HOGAN, CARDOZO and CRANE, JJ., concur in result in memorandum.
Orders affirmed.

The proceeding below was instituted by one E. H. Miller against the Governor, the President of the Senate, the Speaker of the Assembly, the Attorney-General and the Transit Commissioners, to test the constitutionality of the legislation creating the Transit Commission by questioning the title of Commissioners McAney, Harkness and O'Ryan to their offices in an action in the nature of quo warranto by a private person.

SUPREME COURT, NEW YORK COUNTY—SPECIAL TERM, PART V.

By MR. JUSTICE BIJUR.

(The New York Law Journal, February 16, 1922, p. 1744.)

People ex rel. Miller v. Miller, Ec., et al.—This is motion by defendant O'Ryan for judgment in his favor on the pleadings. The action is brought by a private person to test the title of the state transit commissioners to their office because of the claimed unconstitutionality of Laws 1921, chapter 134. From the history of the state writ of quo warranto, narrated in *People ex rel. Peabody v. Attorney-General* (22 Barb. 114), cited with approval in *People ex rel. Demarest v. Fairchild* (67 N. Y., 334), as well as from the implications of the latter case I think that the right to institute this proceeding in this state lies exclusively with the attorney-general (see also *Demarest v. Wickham*, 63 N. Y., 320; *People v. McClelland*, 118 A. D., 177, 178, affirmed 188 N. Y., 618). Motion granted, with \$10 costs, and application to amend denied.

Decisions relating to cases and proceedings before the Commission.

CASE NO. 2583: IN THE MATTER OF THE APPLICATION OF THE CITY OF NEW YORK UNDER SECTION 9 OF THE RAILROAD LAW, FOR A CERTIFICATE OF CONVENIENCE AND A NECESSITY FOR THE CONSTRUCTION AND OPERATION OF A RAILROAD IN THE BOROUGH OF BROOKLYN, CITY OF NEW YORK.

On April 15, 1921, the Public Service Commission for the First District adopted the following order in this case:

Application having been made to this Commission by The City of New York by petition verified February 15, 1921, under Section 9 of the Railroad Law, for an order of this Commission certifying that public convenience and necessity require the construction of a single track railroad from the eastern approach to the Williamsburg Bridge along property owned by The City of New York and under the jurisdiction of the Commissioner of Plant and Structures of said City; parallel and adjacent to said bridge, and crossing Driggs and Bedford Avenue, upon which streets the Brooklyn City Railroad Company is maintaining and operating lines of street surface railroad; and a hearing having been duly had by and before the Commission upon said application on February 25, March 1, March 3, and March 8, 1921, Honorable Alfred M. Barrett, Commissioner, and Honorable Morgan T. Donnelly, Deputy Commissioner, presiding, John P. O'Brien, Esq., Corporation Counsel of the City of New York, by Joseph A. Devery, Esq., Assistant Corporation Counsel, appearing for The City of New York in support of said application, Messrs. Cullen and Dykman, by J. B. Olney, Esq., of Coun-

TRANSIT COMMISSION

sel, appearing for the Brooklyn City Railroad Company, and Terence Farley, Esq., counsel for the Public Service Commission for the First District, by Russell B. Burnside, Esq., Assistant Counsel, appearing for the Commission; and the Commission having on March 8, 1921, approved an opinion written by Deputy Commissioner Donnelly, that it is unnecessary for this Commission to pass upon the said application and recommending for that reason, without passing upon the merits of the application, that it be denied.

ORDERED that said application of The City of New York for a certificate of public convenience and a necessity for the construction of the single track railroad hereinbefore described, be and the same hereby is denied.

(For the Opinion of Commissioner Donnelly see March, 1921, Advance Sheets Reports of Decisions of the Public Service Commission for the First District, page 5.)

The Court proceeding below bearing upon the above case would indicate that the Commissioner was correct in his view that The City of New York was not required to obtain a certificate of convenience and necessity for the purpose of the construction and operation of the spur track in question.

OPINION.

COURT OF APPEALS, STATE OF NEW YORK.

Decided February 3, 1922.

(232 N. Y. 463.)

THE CITY OF NEW YORK, appellant, *v.* **BROOKLYN CITY RAILROAD COMPANY**, respondent.

Appeal from an order of Appellate Division, Second Department, reversing an order of Special Term which confirmed the report of commissioners appointed to determine the damages resulting from plaintiff's placing a cross-over track at intersection with defendant's railroad. Appellate Division also reversed the order appointing commissioners.

William B. Carswell for appellant; William N. Dykman for respondent.

POUND, J.—The City of New York owns four bridges over the East River, including the Williamsburg Bridge. Railroad companies operate surface and elevated or subway cars on all of them, but the city owns the railroad tracks. The Williamsburg Bridge was opened in 1904, and the cars running over it were thus operated with the co-operation of the city until April 27, 1920, when a change in policy occurred. Direct municipal operation of the railroad bridge service was provided for. The board of aldermen adopted an ordinance, which was approved by the mayor on May 3, 1920, providing that after the termination of any existing right no permit should be granted to or any contract entered into with any person or corporation allowing such person to operate cars on the tracks owned by the City of New York over the Williamsburg Bridge and the approaches on the route known as the bridge local service and at that time operated by the Bridge Operating Company; that immediately after the termination of then existing permits all the said transportation service over the said bridge local route should be operated directly by the City of New York and the department of plant and structures was designated as the agency of the city in the operation of such service; that the fare to be charged for passage on the cars so to be operated by the city should "in no case be fixed at a sum greater than the amount necessary to cover the cost of operation of such service, plus the necessary reserve for sinking funds and depreciation."

By subsequent ordinances the commissioner of plant and structures was authorized, after provision for funds had been made, to enter into contracts for the construction of a barn and for the laying of rails from the Brooklyn

DECISIONS BY COURTS

Plaza of the Williamsburg Bridge to the barn, and for the purchase of cars, and also agreements for supplying the electrical current; all in connection with the operation of the local line on the Williamsburg Bridge, with a limitation that the amount involved should not exceed \$300,000.

The city purchased cars, is now constructing a car barn under the structure of the Williamsburg Bridge between Bedford avenue and Berry street, and is constructing a single track along the side of the said bridge for the purpose of connecting the city-owned track on the bridge with the city barn now in construction. To do this it will be necessary to lay the city's tracks across the tracks of the defendant company, located on Driggs avenue and Bedford avenue, and which streets pass under the existing structure of the Williamsburg Bridge.

Commissioners were appointed under section 22 of the Railroad Law (Cons. Laws, chap. 49) to regulate such intersection and an order was made confirming their report. The Appellate Division reversed such orders and denied the motion.

The contention of the defendant is (1) that neither the city nor the commissioner of plant and structures has any franchise or power or authority to operate a railroad over the Williamsburg Bridge; (2) that the city has not, nor has Mr. Whalen, commissioner of plant and structures, obtained a certificate of convenience and necessity, required by section 9 of the Railroad Law, or the permission and approval required by section 53 of the Public Service Commissions Law (Cons. Laws, chap. 48); and (3) that any legislative delegation of power to the city to operate a railroad would be and is unconstitutional because of the prohibition contained in the state constitution in article 8, section 10. The power of the city or of the commissioner of plant and structures for its behalf to operate a railroad on the Williamsburg Bridge is traced as follows: The construction of the Williamsburg Bridge was authorized by chapter 789, Laws 1895. This act provided for the appointment of three commissioners by the mayor of the then City of New York and three commissioners by the mayor of the then City of Brooklyn, which six commissioners, with the respective mayors of both cities, constituted a commission for the purpose of constructing the Williamsburg Bridge.

Section 7 of said act provided: "*When the said bridge shall be completed the said commissioners shall make their final report. * * * The said bridge shall thereupon be and become a public highway for the purpose of rendering travel between the Cities of New York and Brooklyn safe and certain at all time, and the care, management and control thereof shall be vested in the Trustees of the New York and Brooklyn Bridge [the old Brooklyn Bridge] who shall possess in relation thereto like powers as are vested in them in relation to the said New York and Brooklyn Bridge.*"

Section 7 was amended by chapter 612 of the Laws of 1896, in effect May 13, 1896, as follows: "*The said bridge shall thereupon be and become a public highway for the purpose of rendering travel between the cities of New York and Brooklyn safe and certain at all times, and the care, management and control thereof shall be vested in the said commissioners and their successors, who shall possess in relation thereto like powers as are at the time of passage of this act vested in the trustees of the New York and Brooklyn Bridge in relation to the said New York and Brooklyn Bridge, unless the Legislature shall otherwise provide therefor.*" The effect of this amendatory act, unless language is meaningless to express a given purpose, was to vest in the Williamsburg Bridge commissioners powers not only during the construction of the bridge, but also powers continuing upon the completion of the bridge, and to give to the said Williamsburg Bridge commissioners, after completion of the bridge, the same powers in relation to the Williamsburg Bridge as were exercised by the trustees of the old Brooklyn Bridge over that bridge. The powers so delegated were the powers exercised by the Brooklyn Bridge trustees over the Brooklyn Bridge itself as of the date of the passage of the act, May 13, 1896.

What powers did the trustees of the old Brooklyn Bridge on May 13, 1896,

TRANSIT COMMISSION

exercise over the old Brooklyn Bridge? Chapter 300 of the Laws of 1875, section 7, provides: "The said trustees shall have power to fix the rates of toll for persons, vehicles and animals of every kind and description passing over the said bridge, and may operate and authorize to be operated a railroad or railroads over said bridge, and fix the fare to be paid by any passenger on any railroad operated by them." The powers thus devolved on the trustees of the Brooklyn Bridge were continued by the Consolidation Act (Laws of 1882, chap. 410, sec. 1890). The charter of the City of New York, passed in 1897, being Laws of 1897, chapter 378, section 595, provides that the commissioner of bridges shall have cognizance and control of the management and maintenance of the New York and Brooklyn Bridge, of the operation of the railroad on the New York and Brooklyn Bridge, and of the construction, repair, maintenance and management of all other bridges except "The East River Bridge" (that is, the Williamsburg Bridge) (*People ex rel. McCarthy v. Shea*, 51 App. Div., 227, aff'd 164 N. Y., 573). The Williamsburg Bridge commission was still in existence and the Williamsburg Bridge was still in the course of construction. The charter was amended in 1901 (chap. 466), and by section 595 the commissioner of bridges still had the management and maintenance of the New York and Brooklyn Bridge and control "of the operation of the railroad on the New York and Brooklyn Bridge." And in subdivision 5 the bridge commissioner was given, in general terms, the management of all other bridges. This is followed by an express statement that the Williamsburg Bridge commission "is hereby abolished, and all its powers and duties are hereby devolved upon the Commissioner of Bridges of the City of New York."

From the foregoing it plainly appears that the Williamsburg Bridge commission had the power to complete the bridge and the power to operate and authorize to be operated a railroad over it (*Gordon v. Strong*, 3 App. Div., 395, aff'd 160 N. Y., 659; *Hearst v. Berri*, 24 App. Div., 73, aff'd 156 N. Y., 169), and that this power was duly transferred to the City of New York to be exercised by the Commissioner of Bridges of the City of New York, and that the Legislature has not otherwise provided therefor except that by chapter 528 of the Laws of 1916 such powers were conferred on the commissioner of plant and structures. Chapter 663 of the Laws of 1897, regulating the carriage of passengers across the New York and Brooklyn Bridge, provides that the trustees of the Brooklyn Bridge might continue to maintain and "to operate the present railroad on said bridge," but this act does not limit the power already delegated to the Williamsburg Bridge commission as of May 13, 1896, which in turn is devolved upon the present Commissioner of Plant and Structures of the City of New York. Neither does section 601 of the city charter, abolishing the office of trustees of the Brooklyn Bridge and vesting their powers in the commissioner of plant and structures and the board of aldermen, affect the franchise granted to the trustees of the Williamsburg Bridge.

The City of New York, through its commissioner of plant and structures, has and since 1896 has had an existing right and franchise to operate or cause to be operated a railroad on the Williamsburg Bridge. It has exercised such right and franchise to cause the railroad to be operated. It made contracts for the operation of street surface cars over the Williamsburg Bridge and cars were so operated under such contracts on the city's tracks across such bridge until this controversy arose.

The grant of a street railroad franchise carries with it by implication the right to maintain sidings and switches and a spur necessary to enable a railroad to connect with a storehouse for its cars, without which the line could not be operated at all. This was also a right incident to the grant (*Brooklyn Heights RR. v. Steers*, 213 N. Y., 76, 81). It follows that the Legislature having conferred the right to operate a railroad over the Williamsburg Bridge to the City of New York, there being no place on the bridge for the storage of cars, and there being a reasonable necessity therefor in order to permit the city to exercise its franchise, the city may erect a barn underneath the structure of the bridge and by necessary trackage connect the existing bridge tracks with the barn. If in the course of making this connection it is necessary to

DECISIONS BY COURTS

cross over the tracks of the defendant, the law allows such crossing over. In order to operate the railroad and to construct the necessary trackage, no certificate of public convenience and necessity nor permission of the Public Service Commission is required. The right and franchise to operate its railroad under contracts under the special statute vested in the city as a municipal corporation, not as a railroad corporation or private common carrier (*Sun Printing and Publishing Assn. v. Mayor, etc., of N. Y.*, 152 N. Y. 257, 267), and was exercised until shortly before the commencement of this action (*Schinzel v. Best*, 45 Misc. Rep., 455; 109 App. Div., 917). The entire scheme under which the bridge was constructed indicates plainly that the city's authority comes direct from the Legislature and not through the Public Service Commission, and that convenience and necessity and permission were all decreed in 1895 and 1896 by legislative fiat.

The question as to whether the Legislature has the power to grant to a municipal corporation the right to operate a railroad is answered affirmatively in *Sun Printing & Publishing Ass'n v. Mayor, &c., of N. Y.*, (*supra*). The bridge is a public highway and is so declared to be (Laws 1895, chap. 789, sec. 7). The power to operate a railroad across the Williamsburg Bridge was granted by the Legislature in 1896 without qualification or restriction. It was not then dependent upon the subsequent approval of the Public Service Commission and has not since become so. The Public Service Commission may not veto a statute. It is only a legislative creature. It "was not created for the convenience of corporations but for the protection of the public" (Vann, J., in *Village of Ft. Edward v. H. V. R'y*, 192 N. Y., 139, 150).

The order of the Appellate Division should be reversed and the orders of the Special Term affirmed, with costs in this court and in the Appellate Division

HISCOCK, Ch.J.; HOGAN, CARDOZO, CRANE and ANDREWS, JJ., concur; McLAUGHLIN, J., not voting.

Ordered accordingly.

SUPREME COURT—QUEENS COUNTY

By Mr. Justice Cropsey

(The New York Law Journal, May 24, 1922, page 703)

PEOPLE OF THE STATE OF NEW YORK, ON THE RELATION OF SLAUGHTER W. HUFF, RELATOR, AGAINST THE WARDEN AND KEEPER OF THE PRISON OF THE CITY OF NEW YORK, BOROUGH OF QUEENS, AND H. MILLER, CITY MAGISTRATE OF THE CITY OF NEW YORK, BOROUGH OF QUEENS, DEFENDANTS.

PEOPLE OF THE STATE OF NEW YORK, ON THE RELATION OF ROBERT C. LEE, RELATOR, AGAINST THE WARDEN AND KEEPER OF THE PRISON OF THE CITY OF NEW YORK, BOROUGH OF QUEENS, AND H. MILLER, CITY MAGISTRATE OF THE CITY OF NEW YORK, BOROUGH OF QUEENS, DEFENDANTS.

Alfred T. Davison (William E. Stewart of Counsel, and Henry V. Poor and Hersey Egginton, on the brief), for relators;

Dana Wallace, District Attorney, for respondents.

(For the Commission's action in this matter, see page 99 of this report.)

Cropsey, J.—After an examination before a City Magistrate the relators have been held for trial in a Court of Special Sessions of the City of New York charged with a violation of section 29 of the Public Service Commissions Law. By virtue of section 56 of the same law every officer or agent of a common carrier who violates any of the provisions of that law commits a misdemeanor. The relators' contention is that the information filed with the magistrate does not charge a crime and that the proof taken before the magistrate shows that no crime has been committed. There is no disputed question

TRANSIT COMMISSION

of fact involved. Section 29 of the Public Service Commissions Law provides that "no change shall be made in any rate, fare or charge, or joint rate, fare or charge, which shall have been filed and published by a common carrier in compliance with the requirements of this chapter, except after thirty days' notice to the commission" and upon compliance with other conditions "unless the commission otherwise orders." The established and conceded facts here are as follows: In 1892 the Steinway Railway Company of Long Island City, owning a franchise which covered only certain streets in Long Island City, made a mortgage of its property and franchises to the State Trust Company. Thereafter and in 1896 the said company became merged into the New York & Queens County Railway Company, pursuant to the provisions of section 15 of the Stock Corporation Law. The latter company had franchises covering streets outside of Long Island City, and after the merger of the Steinway Company with it the New York & Queens Company operated lines of surface cars under the franchises held by the Steinway Company as well as under its own franchises. And prior to the events which preceded and led up to these prosecutions the New York & Queens Company was operating over all of the said lines for a single fare. The operating Company, however, failed to meet its obligations and did not pay the amounts due upon the mortgage that has been mentioned and which had been given by the Steinway Company. Thereupon the holders of that mortgage brought an action in this court to foreclose and in that action the relators herein were appointed receivers. The order appointed them receivers of all the property of the New York & Queens Company which was subject to the lien of the mortgage made by the Steinway Company. The court could not and did not give the receivers any jurisdiction over the other portions of the New York & Queens Company's property which were not included in the mortgage mentioned, and that mortgage covered only the property formerly owned by the Steinway Company, and none of that extended outside of the limits of Long Island City. The mortgage did not cover other properties of the New York & Queens Company which are outside of that city. The order empowered the receivers to take possession of the mortgaged property, to exclude the New York & Queens Company therefrom and to operate the same. The receivers gave notice that beginning on a stated date and hour they would operate that portion of the lines of the New York & Queens Company that was covered by the mortgage, and filed with the Transit Commission a schedule showing the rate to be charged. Upon the announced date the receivers assumed possession of the mortgaged property and commenced the operation of the road thereover, charging a five cent fare. The receivers at no time have operated beyond the limits of Long Island City. The New York & Queens Company has continued to operate the remaining portion of its lines which were not covered by the mortgage and which were outside the limits of Long Island City. That company has charged a five-cent fare on its lines and there has been no transfer privilege accorded between the lines operated by the receivers and those operated by the company. Nor has there been any through service. The cars operated by the receivers have not gone beyond the limits of Long Island City. Before beginning such operation the receivers did not file a notice with the transit commission under section 29 of the Public Service Commissions Law. They did, however, file a notice under section 28. The question here is whether the provisions of section 29 apply to the facts as stated. A portion of that section has already been quoted. It applies only when a change is to be made in any rate which has previously been filed and published by a common carrier. This section admittedly does not apply to cases in which no rates of fare have ever been filed. And to such situations the provisions of section 28 apply. No rates were ever filed by the Steinway Company. It was merged into the New York & Queens Company in 1896, before the provisions of section 29 first became operative. The only rates that have ever been filed, so far as the record shows, are those that were filed by the New York & Queens Company covering its entire operation. There never was any rate filed covering only those lines that were included in the mort-

DECISIONS BY COURTS

gage mentioned. The receivers do not seek to change any rate of fare. They have authority only to operate the lines covered by the mortgage. For them no rate was ever filed. The operation of them by the receivers is in effect a new operation, new at least in the sense that no such operation had been had previously under the provisions of the Public Service Commissions Law. When the Steinway Company operated those same lines that law had not been passed. The receivers could not operate cars over all the lines of the New York & Queens Company. The order appointing them gave them no such power. On the contrary, it limited their power to the lines covered by the mortgage. The receivers in no way could fix a rate for all the lines of the New York & Queens Company, even if they sought to do so. Upon the merger of the Steinway Company into the New York & Queens Company the former ceased to exist for most purposes. But so far as the rights of the holder of the mortgage which it had given are concerned the Steinway Company is still an existing corporation, as if no merger had ever taken place. For the purposes of the mortgage holder it is a corporation separate and distinct from the New York & Queens Company (see section 15, Stock Corporation Law; *Irvine v. New York Edison Co.*, 207 N. Y., 425; *Syracuse Lighting Co. v. Maryland Casualty Co.*, 226 N. Y., 25). And the receivers' situation here is just the same as would be the situation of the purchaser of the mortgaged property under a judgment of foreclosure and sale. And such rights relate back to the time of the appointment of the receivers in the foreclosure action (*Fletcher v. McKeon*, 71 App. Div., 278, 279, 280). The fact that the mortgaged lines have been operated since the merger as a part of the merging company's system in no way changes the situation. The holders of the mortgage are entitled to have the property covered by it separated from the rest of the operating company's properties and to have the mortgaged lines maintained as independent lines. The situation is quite the same as if the Steinway Company had in 1896, instead of mortgaging its property, given a lease of it to the New York & Queens Company, which lease now expired. The lines belonging to the Steinway Company could then have been returned to it and it would be entitled to operate them independently. And if the Steinway Company had at no time filed any rate, it could not file a change of rate under section 29, but could only do as the receivers did, namely, file a notice of a rate under section 28. Section 29 clearly does not apply to the facts that appear here. If section 28 applies, then, concededly, the receivers have complied therewith. And if neither of these sections apply, then the case is one for the action of the Legislature. It is not proper for the court to legislate. To hold, as the transit commission seems to have done, that section 29 applies here would be merely to enact a law and not to construe or enforce one. In fact, the opinion of the transit commission plainly recognizes that the section does not cover the facts here presented. The contention of the district attorney that it was incumbent upon the receivers "to so operate the railway lines as to continue the five-cent fare over the entire system of the New York & Queens Railway Company" finds no foundation in law or fact. The receivers admittedly have no right to operate any line of the New York & Queens Company except those covered by the mortgage. It is true that the transit commission, under section 49 of the Public Service Commissions Law, may establish a joint rate under certain conditions, but whether or not that shall be done is not involved in this controversy. Under the district attorney's contention, the receivers had no right to operate the lines of which they were appointed receivers, no matter what rate of fare they charged, until they had filed a change of rate under section 29 and until the transit commission had acted thereupon, which might have been any time within eleven months. To construe the law as the district attorney would have it construed and as it necessarily must be construed, if there is basis for these prosecutions, would work a great hardship to the public. It would wholly deprive them of any transit upon any of the mortgaged lines and they would all be required to suspend operation. If the statute plainly indicated that such was to be the effect then these prosecutions might lie. But no

TRANSIT COMMISSION

one who is seeking to uphold and enforce the law and protect the rights of all parties could construe the present statute to mean any such thing as is contended. The present situation so far as the statutes show has never been considered by the Legislature or, if considered at least, has never been covered by enactment. In the further suggestion of the district attorney, that if railroads were permitted to split up into separate units and then file new schedules of rates it would be possible for any company to evade the provisions of the law "by so mortgaging its property that each mortgage could be separately foreclosed and the receivers appointed could each claim to be new common carriers and more fare than that permitted could thus be charged and the public defrauded," he seems to have overlooked the provisions of section 55 of the Public Service Commission Law, which give the Transit Commission jurisdiction over the making of mortgages by railroad companies, and under this the commission, of course, could prevent the happening of any such thing as is supposed. In the present case the mortgage was made years before the Transit Commission or its predecessors came into existence or the Public Service Commission Law was first adopted. There are a number of technical points raised which I have not discussed. To me it seems far preferable to decide such matters as these upon the merits and not upon a mere technicality. Decisions made upon mere matters of form and not of substance and which avoid a discussion and determination of the main questions involved upon their merits tend to create a lack of confidence in the courts. The provisions of section 29 clearly do not apply and I think should be decided now instead of avoiding that question and making the decision rest upon some mere technicality or omission in the proof. The corporation counsel was allowed by the court to file a brief. If the contentions contained therein were sound, then his brief would be an excellent document on behalf of the receivers. The corporation counsel maintains "that the receivers of the property of the former Steinway Railway Company are not common carriers." If the receivers are not common carriers then they cannot possibly under any construction of the law be guilty of a violation of section 29, for that section by its terms applies only to common carriers. If the corporation counsel is correct in his contention, then that would be an additional reason for concluding that there was no basis for the prosecution of these relators. For the purpose of this decision, however, I am assuming without deciding it that the receivers are common carriers. In the same brief the corporation counsel refers to and quotes section 79 of the Railroad Law as amended by chapter 676 of the Laws of 1892 as having some application to the matter in hand. He has omitted to note, however, that this section was repealed a number of years ago and that while its provisions, or some of them, are found in other sections in the present Railroad Law they apply only to steam railroads and not street surface railroads, such as the one in question. Upon the established facts the receivers have not violated any provision of law and their holding for trial by the magistrate was entirely unwarranted. The writs must, therefore, be sustained and the relators discharged from custody.

This decision in regard to street vaults has to do with rapid transit work of the Commission.

COURT OF APPEALS, STATE OF NEW YORK

Decided May 2, 1922.

(233 N. Y. 334.)

In the matter of the application of Seth Low and others, constituting the Board of Rapid Transit Commissioners, &c., for the appointment of commissioners for appraisal relative to acquiring a perpetual underground right, easement and right of way under Joralemon street, &c., Fulton street, &c., Flatbush avenue, &c.

DECISIONS BY COURTS

Appeal by the City of New York from an order of the Second Department of the Appellate Division of the Supreme Court affirming the report of commissioners of appraisal relative to acquiring property rights for subway.

John P. O'Brien, corporation counsel (Charles J. Nehrbas and Edward J. Kenney, Jr., of counsel) for appellant; Hamilton & Freeman (William H. Hamilton and Norman C. Conklin of counsel) for respondents; George O. Redington (Geo. O. Redington, Carleton S. Cooke and William G. Fullen of counsel) for the Transit Commission.

Crane, J.—Carsten Henry Offerman, John Offerman, Theodore Offerman, Lena Maria Rasch and Anna Catherine Schmidt were the owners in fee of premises known as 503-513 Fulton street, in the Borough of Brooklyn, City of New York. Under the surface of Fulton street there has been constructed a subway railroad. Commissioners appointed to assess damage to property owners occasioned by the building of this subway awarded to these abutting owners \$21,000 for the value of all vaults and vault rights taken in the proceeding. The order confirming this award has been unanimously affirmed by the Appellate Division, which, however, granted leave to appeal to this court, as in its opinion questions of law are involved which ought to be reviewed by us.

The question of law is whether or not these abutting owners on Fulton street had any property rights in these vaults under the highway which entitled them to compensation.

This proceeding was instituted to acquire a perpetual underground easement for rapid transit purposes in Joralemon street, Fulton street and Flatbush avenue, and was taken pursuant to the Rapid Transit Act (L. 1891, chap. 4, as amended) as it was in 1905. The board of rapid transit commissioners appointed by the act was authorized to acquire by condemnation any property rights, privileges, franchises and easements, whether of owners or abutters, which in the opinion of the board was necessary for the purpose of constructing and operating such subway road. The word "property" as used in the act was said to include real estate and any rights, terms and interests therein, or rights, privileges, franchises or easements of abutting owners (sec. 39).

The excavation in front of respondent's property was begun in July, 1905, and finished in July of 1907. As constructed, the subway occupies almost all of the space in the bed of the street in front of this property, which was formerly occupied by a vault used by respondents in connection with their steam heating plant. This vault extended under the sidewalk on the Fulton street front nineteen (19) feet and ran along parallel to the building ninety-nine (99) feet. In it were installed four large boilers and coal bins, providing heat, light and power for the seven-story building erected on the lots.

The commissioners found, and the finding has been unanimously affirmed by the Appellate Division, that the permits under which these vaults were constructed contained the following clause: "This permit is issued subject to revocation thereof at any time hereafter by the deputy commissioner of highways when in his judgment the space occupied by said vault or any portion thereof may be required for any public improvement, or upon any violation of any of the terms or conditions hereof."

It is the claim of the owners, which has been sustained by the courts below, that these vault permits gave to the abutting owners an interest or privilege in Fulton street which could not be taken or extinguished without compensation. The basis for this claim, as I understand it, is: First. That the permits have not been revoked by the city so that the vaults are property or easements of the abutting owners as against the board of rapid transit commissioners or the city acting as a subway builder (*Parish v. Baird*, 160 N. Y., 302) is cited as an authority for this proposition. Second. It is stated that the Rapid Transit Act, itself, in defining "property" as including privileges, franchises and easements belonging to abutting owners, has directly and specifically authorized payment of compensation for the taking of these vault privileges. *Oswego & Syracuse RR. v. State of N. Y.* (226 N. Y., 351) is cited as an authority for this latter proposition. The *Oswego* case held that by

TRANSIT COMMISSION

reason of the Barge Canal Act the rebuilding of a bridge rendered necessary by the plans for the Oswego canal, gave to the railroad company the right to reconstruct the bridge and charge the state with the expense. We held that the words of the act "new bridges shall be built over the canals to take the place of existing bridges wherever required or rendered necessary by the new location of the canals," were a direction that the cost of such changes should be met by the state and not by the railroad maintaining the bridge. We do not find in the Rapid Transit Act in question any direction whatever that privileges such as these vault licenses were to be compensated for when destroyed or extinguished by the building of the subway.

The Offermans had no right as abutting property owners to construct vaults under the highway of Fulton street without the permission or authority of the City of Brooklyn, later merged into the City of New York. The permits granted for this purpose were revocable when the street was required for a public improvement, and did not constitute, in our judgment, a right, privilege, franchise or easement as these words are used in the Rapid Transit Act for which compensation was to be made when such were taken or destroyed. As the City of New York had the right to revoke these licenses or permits when the space was required for any public improvement, it is reasonable to expect that the Legislature would be quite specific and clear in its direction to pay for the extinguishment of such privileges if such were its intention, and not leave it to conjecture or implication. If the Legislature intended that such revocable rights or privileges should be paid for in constructing a subway, it should have so stated. The city could revoke these permits and remove the vaults whenever a public improvement was undertaken which necessitated such an act. Having this right, why should the taxpayers be called upon to pay for its exercise? If the Legislature had power to impose the damages incident to removing these vaults upon the city, which had specifically reserved the right to remove them without cost, the Legislature should have made the direction very plain. We do not consider that the word "privilege," used in the Rapid Transit Act, has reference to such revocable permits.

We are further led to this conclusion when we consider the other claim put forth by respondents in the light of our decision in *Lincoln Safe Deposit Co. v. City of N. Y.* (210 N. Y., 34). It is said in behalf of the respondent that the building of subways is not the use of a street for highway purposes (*Matter of Rapid Tr. R.R. Comrs. [Jorammon Street]*, 197 N. Y., 31); that in constructing a subway the city therefore acts toward abutting owners not in its sovereign capacity, but in a proprietary capacity as a railroad builder. When, therefore, these permitted vaults are taken by the city or the rapid transit commission for a public purpose as distinguished from a highway purpose, the act is the same as though the vaults were destroyed by a stranger, and recovery can be had under the *Parish* case, above cited. The answer to this contention has been given in the *Lincoln Safe Deposit Company* case. We there reviewed these vault rights or privileges and held that they did not constitute property or easements in abutting owners not owning a fee in the street for which compensation could be made when destroyed or extinguished in constructing the subway. Referring to vault permits Chief Judge Cullen said: "It is elementary law that public grants must be strictly construed against the grantee. * * * If we assume the instrument to be as broad in its effect as the municipality was authorized to make it, it is not to be construed as a conveyance of a title to a part of the street. The very name 'permit' repels the idea that it was intended as a grant or conveyance. * * * Permits for vaults like those to maintain areaways, stoops, courtyards, save such structures from being unlawful obstructions of the highway and nuisances, but are subject to abrogation for public convenience or necessity. * * * I do not assert that the privilege given to an abutter to construct a vault in the street can be capriciously withdrawn. It is good till the public convenience or necessity dictates its abrogation. * * * Nor do I see any reason why the right of the public authorities to recall the privilege granted the plaintiff and

DECISIONS BY COURTS

similar privileges should be limited to cases where such recall is necessary for street purposes" (p. 38). These excerpts from the opinion in the *Lincoln Safe Deposit Co.* case indicate that we have already determined that the permits issued for the construction of vaults under a highway may be revoked without liability when public necessity so requires, and that public necessity is not limited or confined to those uses which have heretofore been known as highway purposes. The building of a subway is a public improvement—now a necessity, and when vaults are taken in its construction, the permits to maintain them are properly revoked and extinguished. No claim can be made by an abutting property owner, not having a fee in the street, for the revocation of his permit or the destruction of his vault under these circumstances (*Patton v. N. Y. Elevated R. R. Co.*, 3 Abb. N. C. 306, 324, 325). The very nature of the privilege is such that the abutting owner constructs his vault with knowledge that the city authorities cannot give him an easement or a franchise in the street which he may maintain against the rights and interests of the public. At most it is a mere license to use a portion of the highway or land under a highway, temporarily or until the space is required for the public. The city authorities would have no right to grant more than this, even should they attempt to do so (*B'klyn Heights RR. Co. v. Steers*, 213 N. Y., 76; *Ackerman v. True*, 175 N. Y., 353, 363-365; *Deshong v. City of N. Y.*, 176 N. Y. 475).

Much has been said in the briefs of counsel regarding the fee of Fulton street. Part of it is in the City of New York; part of it is said to be in unknown owners. We do not consider the discussion at all important. The ownership of a fee in a street does not give the abutting owner the right to construct and maintain vaults in the highway. A permit or license from the municipal authorities is even then necessary. Such construction may materially interfere or endanger the use of the highway for street purposes. No vault therefore can be constructed, whether the abutting owner has the fee or not, without the consent of the municipal authorities. This authorization once given for reasons above stated can be withdrawn when public necessity requires the use of the street for other purposes. Whether in condemning the fee in the street such a privilege or license may be taken into consideration in determining value we need not now determine (see *Matter of City of N. Y.*, [Pier Old No. 49] 227 N. Y., 119). We are not confronted with this question because of the findings of the commission. The commission determined that a triangular piece of Fulton street in front of the Offerman building was owned by unknown owners, subject of course to the easement for street purposes. This fee was taken in this proceeding, and the commission awarded one dollar to the unknown owners. We cannot go behind this finding, which has been unanimously affirmed. The Offermans, therefore, at the time of the commencement of this proceeding, as well as at the time of vesting title to all of Fulton street in the City of New York, were not abutting owners, having a fee interest in Fulton street.

For the reasons here expressed we determine that the respondents are not entitled to any damage for the destruction of their vault rights, and that the orders below must be reversed and the award vacated, so far as it pertains to these vault interests, with costs to appellant in all courts.

HISCOCK, Ch.J.; HOGAN, CARDOZO, POUND, McLAUGHLIN and ANDREWS, JJ., concur.

Orders reversed, &c.

This decision is of particular interest in connection with case No. 2626 reported in this volume at page 29.

SUPREME COURT—SPECIAL TERM, PART V.

New York County

By Mr. Justice Lydon

(The New York Law Journal, June 15, 1922, page 1001)

Ninth Ave. RR. v. Forty-second St., Manhattanville, &c., R'y—Plaintiff brought this action for an injunction restraining each of the defendants from

TRANSIT COMMISSION

using, or attempting to use, in common with plaintiff or otherwise, any portion of plaintiff's railroad tracks on and along Broadway from Columbus avenue and Sixty-fourth street to Seventy-second street and Amsterdam avenue; for judgment determining that the plaintiff is the owner of said railroad tracks and that neither of said defendants have any right, title or interest therein, and that defendants pay to the plaintiff its damage for wrongfully withholding the use of said tracks and the value of the use thereof since October 1, 1919. The question of the value of the use and occupation is to be submitted to a jury and will not now be considered. The question here to be resolved is the right of the plaintiff to an injunction as prayed for, and judgment determining the plaintiff's rights in the premises. Defendants plead four separate defenses:

(1) That the defendant Forty-second St., &c., Company is the owner of the tracks in question; (2) that said defendant exclusively owns the easterly slot of the north-bound track and the westerly slot of the south-bound track; (3) that said defendant and plaintiff jointly own said track structure, and (4) that since October, 1920, plaintiff has not paid for certain power supplied it along said tracks, and adds that defendant has the right to clean the unused easterly slot or conduit of the north-bound track and exclusively use the same, and the westerly slot or conduit of the south-bound track. Prior to the year 1884 plaintiff had constructed, owned, maintained and operated as part of its street railroad line a double track street surface railroad through, upon and along Broadway (formerly known as Bloomingdale road and later as the Boulevard) from Columbus avenue and Sixty-fourth street to Seventy-second street and Amsterdam avenue. Subsequent thereto, and in May, 1884, the defendant Forty-second Street, &c., Company filed an extension of its route on Broadway from Seventh avenue to Manhattan street, and by a resolution of the Board of Aldermen of New York City passed and approved in June, 1884, was authorized so to extend its railroad route. At that time chapter 252 of the Laws of 1884, known as the Railroad Law, was in force, and section 14 thereof provided that no street surface railroad company "shall construct, extend or operate its road or tracks in that portion of any street, avenue, road or highway in which a street surface railroad is or shall be lawfully constructed, except with the consent of the party owning and maintaining the same," with a provision applicable for a distance not exceeding 1,000 feet. That proviso does not apply in this case, as the distance involved is 1,900 feet. The provisions of the Railroad Law as thus enacted in section 14 have not been since changed in substance and may now be found in section 183 of the Railroad Law. So that at no time since the defendant Forty-second St., &c., Company filed an extension of its route in May, 1884, and received a franchise from the Board of Aldermen of New York City in June, 1884, to operate a railroad on Broadway has it ever had or acquired from plaintiff, at all times the owner of the railroad then constructed and in operation on Broadway between Sixty-fourth street and Seventy-second street, a consent to construct or operate in that portion of Broadway occupied by the tracks of the plaintiff. However, by an agreement made between the plaintiff and said defendant, dated November 28, 1884, which agreement recites that the plaintiff is the owner of the tracks then being used by it on the Boulevard (now Broadway), and which tracks said defendant then desired to use, plaintiff granted to said defendant the right to use its said tracks for a term of twenty-one years from December 1, 1884, and said defendant entered upon and ever since has used the railroad tracks of plaintiff, and is now using the same. The said original agreement of November 28, 1884, is in evidence, and the defendant has admitted same, and has conceded on the present trial that it has at all times used the tracks, and is still using the same, and its alleged defense is based solely upon a claim of joint ownership by reason of having paid to the lessee of plaintiff the cost of changing an underground single slot construction, which said lessee had installed in 1897, to an underground electric double slot construction in 1899, the operation of which double slot construction was abandoned in 1902 or 1903. On March 12, 1892, the plaintiff, subject to the aforesaid trackage agreement

DECISIONS BY COURTS

with said defendant, leased its entire railroad property to the Houston, West Street & Pavonia Ferry Railroad Company for a term of ninety-nine years, which agreement provided that the lessee had the right to change the motive power, and in case of any such change of rails, tracks, betterments or improvements of any and every kind, constructed, made, laid, supplied or provided by the lessee for the operation or use of said railroad, at the end or sooner determination of the lease to revert to and become the property of the lessor. This lease was made to the Houston, West Street & Pavonia Ferry Railroad Company, which by merger became known as the Metropolitan Street Railway Company, and for convenience will be called the Metropolitan Company. In 1897 the Metropolitan Company did change the motive power and constructed and installed a standard conduit electric track. Thereafter, by agreement dated December 31, 1897, made between the Metropolitan Company and several other railroad companies, including both defendants but not including plaintiff, which agreement is known as improved motive power agreement, the several parties to this agreement provided for change to motive power and the construction of heavier tracks and underground construction suitable therefor, and further provided for the apportionment of costs and maintenance charges, and gave each other the use of tracks in various parts of the city. In paragraph first of said agreement the Metropolitan Company, as lessee of the railroad of the plaintiff, the Ninth Avenue Railroad Company, grants to the defendant Forty-second Street Company "the right to use in common the tracks of the Ninth Avenue Railroad Company upon said portion of the Boulevard between 65th street and 71st street for the unexpired period of time for which lease to the Metropolitan Company has been given and during the time covered by any renewals of such lease." By the same agreement, paragraph second, the defendant Forty-second Street Company grants to the Metropolitan Company the right to use in common its tracks upon said Boulevard between Fifty-ninth and Sixty-fifth street. The agreement further provided for double slot or conduit construction, so that for double slot construction on Broadway between Fifty-ninth and Seventy-first streets, that is, six blocks north and south of Sixty-fifth street, each company received the equivalent of what it gave. It appears that the Metropolitan Company has not used the tracks on Broadway south of Sixty-fifth street for more than ten years. It further appears that the Metropolitan Company in the summer of 1899 changed the tracks on Broadway from Sixty-fifth street to Seventy-first street from single slot construction by taking out the yokes and putting in double slot yokes, so that each company furnished its own power but used the same rails. After this change was completed there was double slot operation until 1902 or 1903, when double slot operation was abandoned, and the companies operating over said tracks received power from the same conduits, one in each track. As a result of the receivership proceedings of the Metropolitan Street Railway Company in 1907, continuing until 1911, and on reorganization thereof, the New York Railways Company became the successor of the rights of the Metropolitan Company, and continued as lessee of plaintiff until October, 1919. In March, 1919, a receiver was appointed for the New York Railways Company, and immediately thereafter and in April, 1919, the plaintiff procured an order to show cause, directing that the receiver and the New York Railways Company either pay back taxes and rentals then in default or deliver the property to the plaintiff. This litigation continued until the following September, when, by an order dated September 26, 1919, the receiver was directed not to adopt the aforesaid lease of March 12, 1892, and to cease operating the railroad lines at midnight between September 30 and October 1, 1919, and at that time plaintiff be permitted to re-enter and repossess all of its street surface railroads, &c., then in possession of said receiver. The testimony shows that at said time the receiver did surrender possession and did cease operating said railroad, and that the plaintiff thereupon took possession and has continued to operate its said railroad ever since. The testimony also shows that the cars of the Forty-second Street Company were then still using and continues to use said tracks, and the cars operating thereon have on their sides

TRANSIT COMMISSION

the words "Third Avenue System." I think the record clearly establishes that prior to 1884 the plaintiff had constructed and was operating its railroad tracks on Broadway between Sixty-fifth and Seventy-second streets and had the exclusive right so to do. When the defendant Forty-second Street Company filed in May, 1884, an extension of its route along Broadway, passing the part thereof on which plaintiff's railroad was being operated, and procured what is called a franchise for such extension from the Board of Aldermen of the City of New York, that franchise did not give said defendant any right to construct or operate its railroad in that portion of Broadway on which plaintiff's railroad was already constructed and being operated. Said defendant was prevented by law (sec. 14, chap. 252, Laws of 1884) from constructing and operating its road in that portion of Broadway except with the consent of the plaintiff. A failure to obtain such consent suspended the operation of the franchise of said defendant along that portion of Broadway (Matter of *Thirty-fourth St. R.R.*, 102 N. Y., 343, 351; *Colonial City Co. v. Kingston Co.*, 153 N. Y., 540). Such consent has never been given to the defendant by the plaintiff, but it did grant said defendant the right to use its tracks under the terms of the agreement of November 28, 1884, for a term of twenty-one years. Before the expiration of that agreement the plaintiff on March 12, 1892, entered into a 99-year lease with the Houston, West Street & Pavonia Ferry Railroad Company, and that company or its successors or assigns entered into a trackage and construction agreement with the two defendants under date of December 31, 1897, for the use of the tracks in question for the unexpired period of the lease between the plaintiff and the Houston, West Street & Pavonia Ferry Railroad Company. The agreements have been offered in evidence and I have carefully examined the same. I am of the opinion that these agreements gave the defendant Forty-second Street Company no title or right of ownership to the tracks in that portion of Broadway between Sixty-fifth and Seventy-second streets; the said defendant's use of the tracks under the agreement of 1884 was merely that of a tenant for the term mentioned in that agreement, and thereafter the defendant's use of the tracks under its agreement with the Metropolitan Company was merely that of a subtenant for the term mentioned in that agreement, and upon the termination of the ninety-nine-year lease between the plaintiff and the Houston, West Street & Pavonia Ferry Railroad Company, afterwards the Metropolitan Company, the sublease of the subtenant, the Forty-second Street Company fell, as the cancellation or repudiation of the parent lease destroyed all subleases. The defendant Forty-second Street Company therefore not only had its tenancy terminated but also forfeited all rights that it might have to the rails, tracks, betterments or improvements in changing the motive power, because in the agreement between the plaintiff and the Houston, West Street & Pavonia Ferry Railroad Company it was distinctly provided that upon the termination of the lease all tracks, improvements, &c., should revert to and become the property of the lessor, to wit, the plaintiff herein. Therefore, the defendant's contention that because it had paid for the change of construction from single slot to double slot, it thereby became either owner or joint owner of said tracks, is without merit, for the reason that the reversionary clause in the parent lease is detrimental to such a conclusion. The plaintiff in July, 1921, after failure to arrange a new lease with defendants, brought an action in the Supreme Court for use and occupation. However, when the defendant Forty-second Street Company, in its letter of January 9, 1922, to the Ninth Avenue Railroad Company, stated in writing that the Forty-second Street Company had joint ownership of the tracks on Broadway between Sixty-fifth and Seventy-second streets, all tenant relationship being disclaimed in writing, and said defendant having on January 5, 1922, attempted interference with the tracks of plaintiff, the plaintiff, in my opinion was justified in bringing this action in equity to enjoin the continued interference with use of its tracks. The only agreement which ever existed between the plaintiff and said Forty-second Street Company is the agreement of 1884, for a term of twenty-one years, and the relationship of landlord and tenant once established, possession of the tenant

DECISIONS BY COURTS

is possession of the landlord, and in subordination to the title of the landlord not only during the term, but is presumed to be such, and to remain unchanged, for twenty years thereafter (*Whiting v. Edmunds*, 94 N. Y. 309). This action, while not strictly an action in ejectment, because plaintiff does not own the fee of the street, is in the nature of an action to recover real property, and the exclusive use thereof for railroad purposes, to which plaintiff's right and title is exclusive and complete, and every other person will be enjoined from any wrongful interference therewith or use thereof (*Moore v. Brown*, 139 N. Y., 127, p. 132). It necessarily follows from the foregoing that judgment should be rendered in favor of plaintiff for the relief demanded in the complaint, and the trial proceed on question of value of use and occupation. Submit findings of fact and conclusions of law, to constitute the decision, and also interlocutory judgment, on one day's notice.

Decisions Relating to Motor Bus Operation.

APPELLATE DIVISION OF THE SUPREME COURT.

Second Department.

(200 App. Div. 430.)

PEOPLE ex rel. JOHN C. JUDGE, respondent, v. JOHN F. HYLAN, as Mayor of the City of New York, appellant.

Decided March 10, 1922.

Appeal by the defendant, John F. Hylan, from an order of the Supreme Court made at the Special Term and entered in the office of the Clerk of the County of Queens on or about the 29th day of August, 1921, granting a peremptory writ of mandamus commanding him "to forthwith prevent the operation of the bus line of the Rockaway Auto Bus Company from operating on the streets of the City of New York, particularly in Rockaway Park, Belle Harbor, Neponsit, Roxbury and Rockaway Point." The buses were being operated under a sight-seeing license.

Eleven days after the decision of the Court of Appeals in *B'klyn City RR. v. Whalen* (229 N. Y., 570) the commissioner of plant and structures wrote to the commissioner of licenses a letter calling attention to the application for a sight-seeing license, made by William F. Brunner, to operate from private property at Beach One Hundred and Sixteenth street and Newport avenue to Rockaway Point, and adding: "After investigation, I am convinced that the transit interests of the people of the section affected would be best served by the license department granting the application of Mr. Brunner. There is no other means of transit facilities between these points except this proposed sight-seeing line that the applicant intends operating."

As well from this communication and the action of the commissioner of licenses pursuant thereto, as from the actual operation of the buses under this sight-seeing license, it is apparent that these buses are used as a stage line in the City of New York, without compliance with the requirements of law, although an application for a franchise to operate a line of buses had been for a year pending before the board of estimate and apportionment. Upon petition made to the Special Term by a citizen, the writ of mandamus referred to was issued. From this the mayor appeals.

Patrick E. Callahan (John P. O'Brien, corporation counsel, and William E. C. Mayer with him on the brief) for appellant; John C. Judge respondent in person.

BLACKMAR, P. J.—The bus line was operated in violation of the law (Transp. Corp. Law, §26); it was a public nuisance (Penal Law §1530), and the duty of the mayor is to enforce the law (Greater N. Y. Charter §115)

TRANSIT COMMISSION

There is no doubt that the court has power to issue its order in the nature of mandamus to the mayor to compel performance of his duty (*People ex rel. Weatherwax v. Watt*, 115 Misc., Rep. 120, aff'd 197 App. Div. 929; *People ex rel. Pumpansky v. Keating*, 168 N. Y., 390); but under the present circumstances I think the court, in the exercise of his discretion, should have denied the motion. The court should not, unless required by exigency of public safety or other compelling consideration, interfere in details of the exercise of the executive power by the Mayor of the City of New York.

The order is reversed in the exercise of the discretion of this court and the motion denied.

KELLY and MANNING, JJ., concur.

JAYCOX and KELBY, JJ., dissent and vote to affirm.

Order reversed in the exercise of the discretion of this court and the motion for mandamus denied as a matter of discretion.

(For the Court's decision at Special Term in this proceeding see I. T. C. R. [N. Y. City] p. XXXI.)

SUPREME COURT—SPECIAL TERM, PART I NEW YORK COUNTY

By Mr. Justice Delehanty

(The New York Law Journal, May 27, 1922, page 751.)

Belt Line Railway v. City of N. Y.—This application by the plaintiff, as a taxpayer and railroad corporation, to enjoin during the pendency of this action the City of New York, the board of estimate and apportionment, the members thereof, the commissioner of plant and structures and certain other defendants from operating a certain motor bus line on Sixty-fifth street in this city must be granted. The papers show that in March, 1922, the board of estimate and apportionment, by a vote of all its members, adopted a resolution which authorized the commissioner of plant and structures "to arrange for the necessary motor vehicles and to operate, or to regulate and supervise the operation of the same" along certain described routes, including the Sixty-fifth street crosstown line, at a rate of fare not exceeding five cents, "and to use the staff of the department of plant and structures in so far as it may be necessary to carry out the purpose" of the resolution. In pursuance of the resolution the commissioner established a crosstown line of five or six motor buses on Sixty-fifth street, running from Avenue A on the east, through said street and Central Park, and then by Sixty-sixth and other streets to West End avenue, and returning by the same route. These motor buses are owned by private individuals, but have conspicuous signs thereon reading as follows: "City of New York, Department of Plant and Structures, Avenue A to Sixty-sixth Street and West End Avenue, Fare 5 Cents." Permission in the form of a mere "starter's card" is given to these private owners of the motor buses to run on the route in question. The operator has a state omnibus license, a chauffeur's license and a policy of insurance to indemnify the owner against accidents, but not the city. The buses are run under the supervision and inspection of the commissioner of plant and structures, and on schedules fixed by him, the supervision and inspection of the buses on the various bus lines by a "chief bus supervisor," two "deputy chief supervisors" and by about twenty "bus starters" as employees of the city, with salaries ranging from \$4,000 to \$1,800 per year, costing the city about \$46,000 per year. Although the owners of the buses are acting as common carriers of passengers for hire, and the operation of the buses is successful, yet the city receives no revenue therefrom and all the profits go to private individuals. This city does not have, nor claim to have, any power or authority under its charter to act as a common carrier or to operate motor buses on its streets. In fact, the city at each of the last four sessions of the Legislature has sought unsuccessfully to obtain such power for the board of estimate and apportion-

DECISIONS BY COURTS

ment. Section 1458 of the City Charter prohibits the operation of any stage or omnibus route upon any street in the city until and unless a franchise therefor shall be obtained from the board of estimate and apportionment in the manner prescribed by the charter. By section 74 thereof no grant of a franchise to use any street can be made by said board before a public hearing has been held, after the publication in full of the petition therefor and of the notice of such hearing. The board also must make inquiry as to the money value of the franchise, and the proposed contract, together with the form of resolution for granting the same, shall be entered in the minutes, and the separate and additional approval of the mayor shall be necessary for the validity of every such contract or resolution. The Transportation Corporation's Law, in section 25, provides, among other things, that any owner or operator of a motor bus line on any street of a city shall be deemed to be a common carrier under the Public Service Commissions Law and "shall be required to obtain a certificate of convenience and necessity for the operation of the route or vehicles proposed to be operated"; and section 26 of that law provides that no bus line nor motor vehicle line carrying passengers for fifteen cents or less or in competition with another common carrier, shall be operated upon any street in any city "nor receive a certificate of public convenience and necessity" until the owner shall have procured, after a public notice and a hearing, the consent of the local authorities to such operation upon such terms and conditions as such local authorities may prescribe, including, among other things, compensation for wear and tear of pavement, safeguarding passengers, and, if required, the giving of a bond in an amount and form satisfactory to the local authorities, providing security for the prompt payment of any sum accruing to the city; and the performance of any other obligations, as well as adequate security for the payment of any damages suffered by any person on account of the operation of such line, or any fault in respect thereto. Section 53 of the Public Service Commissions Law provides, in substance, that no common carrier shall exercise any franchise without first having obtained the permission and approval of the commission under whose jurisdiction such franchise is to be exercised, and that such commission has power to grant the same "whenever it shall, after due hearing, determine" that such exercise of the franchise is "necessary or convenient for the public service." In the instant case not one of the foregoing positive provisions of the charter, of the Transportation Corporations Law, or of the Public Service Commissions Law, has been complied with by the city or by the board of estimate and apportionment, or by any of the defendant owners of the motor buses in question. No pretense is made that the law has been complied with, and the only defense interposed by the city is the plea that an emergency exists in the transit situation in the City of New York, and that requests have been made by citizens and organizations located near the Sixty-fifth street crosstown line for the establishment of that line, and that there is a necessity therefor. Counsel for the city calls attention to the discontinuance of lines, and parts of lines, of transportation in different parts of the city, but there is no claim, and no proof that the 65th Street Crosstown line of motor buses takes the place of any abandoned line in or near the street in question. Neither bankruptcy nor the disintegration of any transportation line has affected this new line. No emergency exists. An emergency is something sudden, unexpected, calling for immediate action, urgent and pressing. The Appellate Division in the Second Department has already passed upon the questions here involved, and its decision has been affirmed by the Court of Appeals. In *Brooklyn City RR. v. Whalen* (191 App. Div., 737, aff'd in 229 N. Y., 570) the Appellate Division, per Mr. Justice Blackmar said: "The word 'emergency' is defined as a sudden or unexpected occurrence or condition calling for immediate action. This can hardly be applied to a permanent condition of inadequacy of service, and it is plainly to be seen that there is no emergency which justifies the continued operation of the stage lines." In that case, as here, counsel for the defendant contended that the city operation of stage lines is authorized by the so-called Home Rule Act (Gen. City Law, art. 2-a), but the court held, in the language of the court, "that the Home Rule Act does not contain any grant of power to the city, expressed or implied, to operate lines of transportation

TRANSIT COMMISSION

in the streets." The court further said: "Section 25 of the Transportation Corporations Law requires the owner or operator of a stage route in the streets of any city to obtain a certificate of convenience and necessity. This has not been done. * * * The anomalous situation is that while the statute expressly prohibits the operation unless under a franchise (Greater N. Y. Charter, sec. 1458), the city has, in plain disregard of the provisions of its own charter, without granting a franchise authorized individuals to run these automobile stages on established routes through the streets for their own profit. If the welfare and convenience of the citizens require additional accommodations for transit such as would be furnished by established stage routes, there is a legal way to accomplish the result. * * * But the city has no power of municipal operation, nor has it the right to authorize others so to use the streets without observing the conditions of a legal and regular grant of a franchise." The contention of counsel for the city to the effect that much of the above decision "has been nullified by the legislative declaration of any emergency in the Transit Act of 1921" is wholly without merit. That argument entirely ignores the significance of the fact that the Legislature established the transit commission as the exclusive and sole agency for "the relief of the emergency" by a broad and comprehensive "plan of readjustment." By section 108 of the Transit Act the transit commission, in connection with any such plan, is given authority to make contracts for the use of streets for stage and omnibus routes. At the same session also and at three other sessions, including the last, the Legislature refused to pass a bill, urged in behalf of the city, to amend its charter so as to give power to the board of estimate and apportionment to authorize and establish motor bus routes over any of the streets and parkways of the city and the operation thereof by the city without the consent or action of any other board or body. Thus not only by what the Legislature has done, but also by what it refused to do, its intention and purpose become clearly expressed. (*Matter of City of Niagara Falls vs. P. S. Comm'n*, 229 N. Y., 333, at pp. 338 and 340). That intention and purpose, so manifested, conclusively show that neither the city nor any one of its constituted authorities has any power to attempt to relieve a so-called emergency which is not sudden or unexpected, but may be better described as a deplorable chronic condition in the transit situation. So, too, the analogy and argument sought to be drawn by counsel for the city from the emergency rent laws have no relevancy or application to the instant case, as those laws were enacted by the legislature, having full power, and have been held to be constitutional and a valid exercise of the police power of the state. That is entirely different from an attempt to relieve an emergency by a local board of a local city, having no power under the charter, and to which the Legislature has expressly refused to give any such power. Moreover, the cost of operation to the city without any revenue in return is a clear waste of public money. By section 10 of article 8 of the constitution it is provided in substance that no city shall give or loan money or credit to or in aid of any individual or corporation nor shall any city incur any indebtedness except for city purposes. Hence there is not only a waste of public moneys, but there is also a clear violation of the constitution by the city. The proposed line at Sixty-fifth street is parallel with the Fifty-ninth street crosstown line of the plaintiff, and the claim by the city that the new line has become necessary because of the elimination of certain transfers by the plaintiff on its crosstown line tends to show that it is a competing line in spite of the city's contention to the contrary. The new line gives no transfers, and the mere fact that it may be convenient for a small part of the community is no justification for its unlawful existence. The plaintiff therefore, as a taxpayer and competing railroad, having shown a violation of law and a waste of public moneys, has the right to maintain this action to restrain such illegal acts on the part of all the defendants. Counsel for the city contends that the court in the exercise of "a wise and sound discretion" should not interfere with any temporary transportation designed to serve the public convenience. Such a discretion, however, would be neither "wise" nor "sound." No court of equity can sanction such a clear violation of law without itself becoming lawless and a menace to a sound and wise administration of justice. Settle order on notice.

DECISIONS BY COURTS

SUPREME COURT—SPECIAL TERM, PART I

New York County

By Mr. Justice Donnelly

(The New York Law Journal, July 5, 1922, page 1210.)

Kingsbridge R'y and Third Ave. RR. v. City of N. Y. et al.—Motion to enjoin the defendants from supervising and inspecting the private operation of motor buses, pursuant to the permission of the board of estimate and apportionment given on April 21, 1922, and from taking any steps for the operation of any bus line upon the routes described in paragraphs 3 and 4 of the complaint, the terminals being One Hundred and Fifty-Fifth street and Eighth avenue and Dyckman Street Ferry. I believe it would be a great inconvenience to the public to stop the operation of this bus line. It seems to be the only means of transit available at the present time for the residents of Washington Heights to connect with Dyckman Street Ferry. This ferry during the summer season is in great demand, and the public should have every opportunity of reaching it with some degree of comfort. Such an emergency existing, which amounts to a continuing necessity in this locality, I hold that the municipality, for the time being at least, is within its power in establishing and operating this particular bus line. Motion denied.

(This decision is interesting when read in connection with the decision in *Brooklyn City Railroad vs. Whalen*, 191 App. Div. 737, affirmed by the Court of Appeals 229, N. Y. 570 and other bus decisions herein.)

SUPREME COURT—APPELLATE DIVISION.

SECOND DEPARTMENT

Decided July 22, 1922.

(202 App. Div. 425.)

SLAUGHTER W. HUFF and ROBERT C. LEE, as Receivers, et al., appellants, v. CITY OF NEW YORK, et al., respondents.

Appeal by the plaintiffs, Slaughter W. Huff and another, from an order of the Supreme Court, made at the Queens Special Term and entered in the office of the Clerk of the County of Queens on the 6th day of July, 1922, denying their motion for an injunction during the pendency of the action, restraining and enjoining the defendants from taking any steps or doing any act or thing toward the operation of a motor bus or omnibus line or route over Grand avenue, in the former city of Long Island City, Borough of Queens, between Eighteenth avenue and Second avenue.

Alfred T. Davison, for appellants; William E. C. Mayer (John P. O'Brien, corporation counsel, Edgar J. Kohler and Robert J. Culhane with him on the brief) for the respondents.

BLACKMAR, P. J.—It was decided by this court in *Brooklyn City Railroad Co. v. Whalen* (191 App. Div., 737) that the City of New York has no power to establish or operate bus lines in the streets of the city, except by the grant of a franchise in the way pointed out by the statutes. That decision was affirmed by the Court of Appeals (229 N. Y. 570) and is the law of this state. Every consideration urged by the respondents in the case at bar was presented in that case and carefully considered. It is useless to go over again the reasons that induced this court to reach that decision. They are fully set forth in the opinion of the court and are presumably familiar to the corporation counsel and to the defendants.

The Legislature has declared that an emergency exists in the transit situation in the City of New York (Laws of 1921, Chapt. 134). This "emergency" refers to the transit situation in the city as a whole, and that word, as used in the act, characterized the defects and insufficiencies of the general tran-

TRANSIT COMMISSION

sit service. But while the Legislature declared such an emergency to exist, it at the same time prescribed the remedy, and the application of that remedy was conferred upon the transit commission and not upon the City of New York. The word "emergency" as used in the housing legislation of April and September, 1920, and in the Transit Commission Law, does not have the meaning given to it by lexicographers. The Legislature has given to the word "emergency" a new and peculiar meaning namely a permanent condition of insufficiency of service or of facilities, resulting in social disturbance or distress. The rules of law applicable to a condition of "emergency" as defined by the dictionaries and encyclopaedias do not apply to an "emergency" with the meaning with which that word is used in the legislative enactments referred to. It is the condition or thing and not the word which calls into operation the rules of law.

Section 1458 of the Charter of the City of New York reads as follows: "No stage or omnibus route or routes for public use, or any alteration or extension thereof, or any alteration or extension of any existing stage or omnibus route, shall hereafter be put in operation in or upon any street, avenue, park, parkway, bridge or public ground within the City of New York until and unless a franchise or right therefor shall be obtained from the board of estimate and apportionment in like manner as, and subject to the limitations and conditions relating to, franchises or rights in this charter provided and imposed."

The grant of a franchise requires not only the action of the board of estimate and apportionment, but also of the Public Service Commission or the Transit Commission as to its convenience and necessity. The board of estimate and apportionment has granted no franchise, the Public Service Commission or the Transit Commission has issued no certificate, and consequently the acts of the city authorities in establishing this bus line are plainly illegal.

If there is public need for a bus line on the route selected, one may be easily and legally established. The board of estimate and apportionment can grant a franchise in which the rights of the city and the public may be safeguarded, and the Public Service Commission or the Transit Commission will presumably act in furtherance of the public welfare. An attempt to establish the line by illegal methods can result only in failure and the loss to the public of the facilities which might have been secured by regular and legal procedure.

The action may be maintained by a common carrier of passengers with whom the bus lines come in competition, or by a taxpayer for an injunction to restrain an illegal official act and to obtain a judgment for the loss to the city occasioned by such an illegal act of the officials, or by any citizen and resident of the city to secure the abatement of a nuisance in the public streets (*People ex rel., Pumpansky v. Keating*, 168 N. Y. 390).

The order denying the motion for an injunction should be reversed on the law, with \$10 costs and disbursements, and the motion for the injunction granted as prayed for, with \$10 costs.

Rich, Kelly, Kelby and Young, JJ., concur.

Order denying motion for injunction reversed in the law, with ten dollars cost and disbursement, and the motion for the injunction granted as prayed for, with ten dollars cost. Settle order on notice.

The decision below, in a taxpayer's suit, resulted in restraint of all participation by the City and its officials in the operation of motor buses on so-called municipal lines in the City of New York.

SUPREME COURT—SPECIAL TERM, PART IV.— NEW YORK COUNTY

By Mr. Justice MULLAN.

(*The New York Law Journal*, October 5, 1922, p. 58.)

Schafer v. City of N. Y. et al.—The plaintiff as a taxpayer sues for a decree enjoining the authorities of the City of New York (1) from appropriating municipal funds for the purchase and operation of municipal motor buses, and

DECISIONS BY COURTS

(2) from operating or assisting in or supervising the operation of the privately-owned buses that are now being operated without franchise but with official sanction; and he prays also that the individual officials responsible for the operation of the last mentioned vehicles be compelled to make restitution to the city of such municipal moneys as may be found to have been expended in and about such operation. The issues involved appear to cover the entire body of controversial matter that has grown out of the operation of the so-called city buses. In a strict sense the city officials have not operated these buses. They have, however, sanctioned and supervised, and are now supervising, their operation, and they have been and are using for such supervisory purposes the services of city employees assigned to the department of plant and structures in the capacity of painters, ironworkers, laborers, &c. In so far as concerns the prayers for injunction, I am unable to find any room for the formation of independent thought by a court of first instance upon any of the questions that are here involved. For the reasons stated by Mr. Justice Blackmar, writing for the Appellate Division of the Second Department, in *The Brooklyn City Railroad Company v. Grover A. Whalen, individually and as commissioner of plant and structures* (191 App. Div., 737, aff'd 229 N. Y., 570) and in *Slaughter W. Huff and Robert C. Lee, as receivers, v. The City of New York and others* (202 App. Div., 425) the city authorities were and are without power to authorize the bus operation they have permitted and sanctioned and which, indeed, they initiated. It would be a work of supererogation to go through the mechanics of applying to the facts here the principles and rules of law stated by Mr. Justice Blackmar or to treat separately or as forming different classes the numerous specific routes or bus lines that figure in this action. More may be said either in favor or against particular lines or routes, but it would serve no useful purpose to state degrees of unlawfulness, as, for the fundamental reasons enunciated in the decisions referred to, the city's participation in the operation of these buses is under those decisions wholly unwarranted by existing law. It may perhaps be a justifiable cause for regret that the City of New York has not been given greater power to work out its own destiny in the matter of transportation, which, while of general interest to the whole state, is primarily and particularly a matter of concern to those who live and have their being here and who must in one form or another do the paying for whatever transportation they get, whether good or bad; but that is a subject with which the Legislature has to do and with which courts are not permitted to concern themselves. The learned corporation counsel makes much of the convenience to the public that has been served by the operation of these bus lines. The proofs make it quite clear that some of the bus lines have rendered a noteworthy service and that in the case of several of the routes the buses have afforded transit service to neighborhoods and places that will be greatly in need of some kind of traveling accommodation when the bus lines now serving them shall be discontinued. Indeed, a court may take judicial notice of what is so generally known to those who live here, that many of these bus lines have supplied a justified demand for transportation service and that their discontinuance promises to work a serious hardship upon a considerable portion of a public that has shown marked forbearance under transit conditions so inadequate in some respects and so indubitably bad in others as would be tolerated only by a patient people. But, as Mr. Justice Blackmar has pointed out, the city authorities must, if they would better these conditions that so loudly cry for betterment, avail of the legal machinery that the people through the Legislature have provided. No purpose, however worthy, can be justified by unlawful means, and it is regrettable that courts are obliged so frequently to call attention to the truism that ours is a government of laws and not of men. The real argument of the corporation counsel appears to come to this, and nothing more, that we are dealing with an emergency that justifies the use of the extraordinary measure of relief of which the city officials have availed. The Legislature has recognized the existence of what it has called an emergency, but, as was pointed out in the decisions referred to, the sort of emergency the Legislature had in mind, and which we all know exists, it took care of, or at least essayed to take care of, by the statute it passed last year. There is no other emergency here involved. The

TRANSIT COMMISSION

degree may have been enhanced by the passing months, but the character remains. The argument of the city's law officer might be good if we were dealing with a situation unforeseen and practically unforeseeable. We neither have, nor can we be expected to have, legal machinery to take care of the consequences of a San Francisco earthquake or a Chicago fire. Probably in case of such a catastrophe as either of those it would be the duty, or at least the right, of the officials of a city to set aside, or ignore for the pressing moment, many statutes and principles that were designed to be operable only in normal times. In the face of such a crisis the first of all laws, that of self-preservation, would come into play. Obviously, no matter how bad one may think the transit conditions in this city are, they are not as yet so bad as to take on the character of such a calamity as I have mentioned. I think there can be no reasonable doubt that the plaintiff is entitled to every measure of injunctive relief that he seeks. It remains to pass upon the personal liability of the individual defendants for the very considerable sums of city money that have been expended in order that these buses might be run. A court should be very loath to impose such a heavy penalty upon officials who must be assumed, in the absence of the strongest proof to the contrary, to have acted in good faith. It does not seem to me that either brief adequately covers the point. I wish to receive full written argument on or before October 15, and if counsel desire in addition to make oral argument I shall afford them an opportunity so to do.

SUPREME COURT—SPECIAL TERM, PART I (Motions)— KINGS COUNTY

By Mr. Justice VAN SICLEN

(The New York Law Journal, November 22, 1922, page 634)

L. I. Electric R'y v. City of N. Y.—The defendants are operating as common carriers certain buses along routes styled Queens, Springfield Dock, Jamaica South, Jamaica and Jamaica City Line, in the Borough of Queens in conceded disregard of all the laws applicable thereto. The plaintiff owns, maintains and operates trolley lines in the same territory as that served by the buses, also concededly in compliance with and pursuant to all existing laws and regulations applicable thereto. The plaintiff claims that the buses compete with its lines, deprive it of revenue that would ordinarily come to it and that such competition is unfair in that the defendants pay no taxes, make no guarantees as to regularity, sufficiency or continuity of service, make no repairs to the roads that they use and create no reserve to meet claims for such injuries to persons and property as they may be responsible for and in addition thereto have failed to comply with any of the laws applicable to common carriers of passengers. In consequence thereof the plaintiff, as a taxpayer, and as the owner and operator of an existing line of transit which has complied with the laws, claims that it is entitled to an order restraining the concededly illegal operation of defendants' buses. The only paper submitted to this court in opposition to the motion is a short affidavit of the Commissioner of Plant and Structures of the City of New York, which states that an examination of the respective routes of the plaintiff and the defendants as shown on the map will show that the routes are not parallel or proximate. Unfortunately it is not pointed out how that conclusion is reached and this court has been unable to find, after a thorough examination of the map, any justification for such a conclusion. The fact is that the routes followed by the buses, so far as they pass through settled areas, run substantially parallel with the plaintiff's transit lines and serve the same territory throughout. All the termini or traffic centres served by the plaintiff are tapped directly by these bus lines. The decisions of the Appellate Division and Court of Appeals (*B'klyn City v. Whalen*, 191 A. D., 737, aff'd 229 N. Y., 570; *Huff v. City of N. Y.* 202 A. D., 425) have completely fixed the rules of law applicable to the situation here disclosed. This court is bound by such

DECISIONS BY COURTS

decisions and they are controlling. The plaintiff's motion being in no other respects opposed or controverted it necessarily follows that the motion must be granted.

The following is the so-called Bright decision. It enjoined a novel undertaking on behalf of Bright and others to continue the operation of bus lines in Brooklyn installed by the Manhattan Transit Company but stopped by Court orders, through the medium of publication of certain newspapers, wherein there appeared coupons entitling subscribers thereof to ride free on said lines, control of which Bright claimed.

SUPREME COURT—SPECIAL TERM, PART I (Motions)— KINGS COUNTY

By Mr. Justice VAN SICLEN

(The New York Law Journal, November 27, 1922, page 689)

Garrison, as rec'r, &c., v. Manhattan Transit Co. et al.; Garrison, as rec'r, &c., v. Bright et al.—An order has heretofore duly issued out of this court restraining the defendants and each and all of them and their agents and any and all persons, acting in aid of or in conjunction or collusion with them from operating or in any way assisting, instigating, procuring, regulating, supervising, licensing or permitting the operation of any omnibus or stage over and upon the route described in the complaint, to wit, “* * * * for the purpose of carrying passengers for hire in competition with any of the plaintiff's railway lines.” After this order was duly entered and certified copies thereof duly served on all the defendants the latter entered into some arrangement with one Charles Bright, whereby he took up and continued the operation of the defendants' said vehicles along substantially the same routes. In his affidavit defendant Bright states that he leased their buses at fixed rental (not specified) and that he hires and pays the chauffeurs who operate same. He denies under oath that he was aware of the existing restraining order until October 24, 1922, when he was personally served with same. He denies that he is a common carrier but says that he operates said buses for the purpose of increasing the circulation of certain newspapers which he publishes and “to make the said papers of value to the people and to economize ink, paper and printing in general he has undertaken to furnish free of charge to readers of his papers transportation to and from their homes and other places.” The *modus operandi* appears from the moving papers as follows: Each so-called newspaper of Charles Bright contains a coupon good for one ride. A paper containing one coupon costs five cents and one containing two coupons costs ten cents. They may be bought at numerous places along the route followed by the buses. A prospective passenger purchases a copy of the paper for five cents and boards the bus, the collector thereon takes the paper and tears off the coupon. In some cases the remaining portion of the newspaper is preserved by the passenger, but in most cases it is not. Also it appears that passengers could purchase the paper from the collectors on the buses. The samples of newspapers submitted to the court appear to be made up chiefly of advertising matter interspersed with news items sheared or scissored from bona fide papers and articles on various phases of the bus situation throughout the City of New York. Each sample contains numerous columns of the names and addresses of places where the paper can be purchased. As compared with bona fide newspapers now in circulation in the vicinity the news value of the Bright paper is nil. The plaintiff claims the method pursued is a mere subterfuge and that the outstanding injunction is being violated in letter as well as spirit both by Bright and by the defendants from whom he leased the buses. The defendants from whom Bright claims to have rented the buses admittedly own them as before but claim that they personally were not served with the injunction. Bright says that he had no knowledge of the injunction or acquaintance with these

particular defendants until October 24, when he was served with the injunction. This is certainly a most remarkable state of affairs because every daily newspaper published in the City of New York carried the news of the whole proceeding wherein the injunction was granted from beginning to end in the most prominent places therein. That such an enterprising publisher, so ready to increase the circulation of his newspaper that he leased for a long term a fleet of buses and undertook the daily operation thereof, should be so out of touch with one of the most talked of and published about matters of the day is so palpably false that it is almost absurd to waste paper and ink to demonstrate it. Personal acquaintanceship is established by the sworn statements of the defendants themselves. The preliminary injunction as contained in the order to show cause was issued September 8, 1922. The injunction claimed to have been violated was made and entered October 3, 1922. Bright admits that the newspapers mentioned were first published September 13 and then September 22. The defendants who claim they were not served with the injunction admit that they leased their buses to Bright on October 14. The attorney representing these defendants swears that he was consulted about Bright's scheme or proposition subsequent to the granting of the injunction; that he carefully studied the injunction and advised his clients that nothing therein prevented them from leasing or selling their automobiles. He admits that he knew and they knew that "Bright proposed to use said vehicles for the carriage of subscribers, packages, parcels, goods and employees." So that advising a client to do one thing which by itself in the abstract might not be contemptuous any more than it was effectual would not relieve the client any more than it would the attorney in face of the known fact that a much greater thing was actually contemplated as the purpose of the transfer. Advising a client that he may do something that actually is contemptuous may not of itself be a contempt, but it is highly unethical, however, and if fortified by participation in any way in the consummation of the contemptuous purpose then all parties concerned fall into the same category. It is obvious, therefore, that the defendant owners, on the one hand, were fully apprised of the fact that these buses were to be used for exactly the same purposes that the injunction prohibited and that Bright, on the other hand, knew and must be charged with the knowledge that the operation of these vehicles in the manner contemplated was in direct violation of the injunction. They set about thereupon to devise a scheme, puerile in its conception, whereby they hoped to circumvent the existing orders of the court. Who concocted it is of no consequence to the court because the defendants, as well as Bright, have adopted it as their own. That they had any real hope of hoodwinking the court is inconceivable and the only logical explanation of their conduct is that they embarked on the venture either willing to take a chance or secured by the assurance of the protection and assistance of much greater resources than they ordinarily had at their command. In the face of the conceded facts it would be an insult to the most modest intelligence to enter into any discussion of the terms "subscribers," "newspapers," "common carriers," "valuable paper," "ride invitation," with which the opposing affidavits are so generously interspersed. In order to deny the relief sought the court would have to ignore and override every canon of the law, every principle of equity and every provision of the existing statute law applicable to this case. And to what end—that legal sanction would be given to a course of conduct which the appellate courts have declared to be a legal nuisance (*B'klyn City v. Whalen*, 191 A. D., 737, aff'd 229 N. Y. 570; *Huff v. City of N. Y.*, 202 A. D., 425). It follows, therefore, that both motions, one restraining the operation of the buses by Bright, and the other, must be granted.

The following decision has to do with the attempt by the Manhattan Transit Company to operate a line of motor buses along Grand Avenue between 18th Avenue and 2nd Avenue, Borough of Queens. That company contended it had the right so to do by virtue of the incorporation of the General

DECISIONS BY COURTS

Carriage Company under Chapter 470, Laws of 1899, and the merger thereof by it in 1902.

Further facts are stated in the decision.

SUPREME COURT—QUEENS COUNTY

By Mr. Justice VAN SICLEN

(*The New York Law Journal*, December 19, 1922, page 973.)

Huff and ano. v. Manhattan Transit Co. et al.—The plaintiffs are the duly appointed receivers of the New York & Queens County Railway Company, which has been duly empowered and authorized to engage in the business of common carrier since 1896 or before. The defendant corporation has recently commenced the operation of buses as a common carrier in direct competition with the plaintiff company, with no other right or authority than that gained from its charter. In 1899 the Legislature passed "an act to provide for the organization of the General Carriage Company." This was a private act (*Economic Power & Const. Co. v. City of Buffalo*, 195 N. Y., 286, p. 295). "Every act incorporating a company for private gain and generally all acts relating to a single corporation are private acts, while an act relating to all corporations would be a public act." This company became merged with the defendant corporation in 1902. The former never operated vehicles of any kind over any fixed or prescribed route and the only operation of such a line carried on by the defendant was a bus run by it between Wall street ferry and Cortlandt street ferry in 1903-1904, and no business of any kind has been carried on by it since 1911. Admittedly neither the defendant nor its predecessor was organized under or complied with any statute then or since existent designed to control, regulate or supervise common carriers. In 1899 there was a statute, and there has been ever since general statutes, providing for the incorporation of corporations which purposed to be common carriers (Chap. 142 Laws 1854; Chap. 974 Laws of 1867; Transportation Corporation Laws, Sec. 20). If the defendant is correct in its contention it must be held that it procured by a private act more general and unrestricted powers than could be obtained by incorporating under then existing general statutes, because the private act is not specific as to routes or character of service, although therefore no common carrier could be organized under the general statutes unless the proposed routes were specifically set forth. As said in *Economic Power Co. v. City of Buffalo* (195 N. Y., 286, p. 300): "We do expect the Legislature to put in a private act incorporating a company substantially the same general and incidental provisions that it requires in the certificate of incorporation under a general act for the same purpose or purposes." Section 16 of Article 3 of the Constitution of the State of New York provides: "No private or local bill which may be passed by the Legislature shall embrace more than one subject and that shall be embraced in the title." It is a fair question, then, to ask whether the title of this act is such as to plainly infer that its recipient was to be a common carrier unrestricted as to route or character of service. This subject was also fully discussed in *Economic Power Co. v. City of Buffalo* (supra), and it would seem that the act in question transgressed thereunder. It is of course conceded that the defendant corporation has not attempted in any way to comply with existing statutes purporting to regulate and supervise the character of business it is engaged in (N. Y. City Charter, Secs. 74, 1458; Transportation Corp'n Laws, Secs. 25, 26; Public Service Comm'n Law, Sec. 53). It claims that the charter power as granted in 1899 makes the same unnecessary. If it had ever exercised such powers and had continued to exercise them from the inception down to and through the time when the various acts of regulation, supervision and control had been passed it might with some justification assert or claim that it had the right and power to so continue, subsequent statutes notwithstanding. But where it has never exercised such powers, and now, after existing statutes of regulation, supervision and control have been passed it undertakes to claim and exer-

TRANSIT COMMISSION

cise such powers it seems to this court that, even if it be conceded for the moment that it has such powers, they may be exercised only under the regulation, supervision and permission now required by law (Transportation Law, Sec. 1458; *Public Service Comm'n v. Booth*, 170 A. D., 590). Section 1458 of the City Charter provides that: "No stage or omnibus route or routes for public use * * * shall hereafter be put into operation * * * until a franchise or right therefor shall be obtained." In *New York Electric Lines v. Empire City Subway Co.* (235 A. D., 179) the Supreme Court upheld the revocation of a charter granted in 1882 to construct lines where no lines had been constructed up to 1906. It is well-known history that the rights of the public are ever requiring greater supervision, more definite regulation and closer control of common carriers, and if dormant or otherwise extinct and defunct corporations could be resurrected in the manner in which the defendant claims it has the right to do and avoid all present day regulations the progress of a generation would be set at naught. Taking into account, therefore, all the considerations expressed herein, it is the opinion of this court that the defendants have not justified the operation of vehicles complained of and there being no question in any other respect but that the plaintiffs are entitled to relief. Judgment will be granted for the plaintiffs.

PUBLIC SERVICE COMMISSION LAW

of the

STATE OF NEW YORK

Amendments enacted during the Legislative Session of 1922

The following are the laws, affecting the Transit Commission, its jurisdiction, duties or powers, enacted by the 1922 Legislature which either amended sections of the Public Service Commission Law or added new sections thereto:

LAWS OF NEW YORK.—By Authority

CHAPTER 153

AN ACT to amend the public service commission law, generally.

Became a law March 22, 1922, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section thirteen of chapter four hundred and eighty of the laws of nineteen hundred and ten, entitled "An act in relation to the public service commission and the transit commission, constituting chapter forty-eight of the consolidated laws," as last amended by chapter one hundred and thirty-four of the laws of nineteen hundred and twenty-one is hereby amended to read as follows:

§ 13. *Salaries and expenses.* The annual salary of each commissioner shall be fifteen thousand dollars (\$15,000). All officers, clerks, inspectors, experts and employees of a commission, and all persons appointed by the counsel to a commission, shall receive the compensation fixed by the commission. The commissioners, counsel to the commission and the secretary, and their officers, clerks, inspectors, experts and other employees, shall have reimbursed to them all actual and necessary traveling and other expenses and disbursements incurred or made by them in the discharge of their official duties.

§ 2. Subdivision one of section forty-nine of such chapter, as amended by chapter one hundred and thirty-four and chapter three hundred and thirty-five of the laws of nineteen hundred and twenty-one, is hereby amended to read as follows:

1. Whenever either commission shall be of opinion, after a hearing had upon its own motion or upon a complaint, that the rates, fares or charges demanded, exacted, charged or collected by any common carrier, railroad corporation or street railroad corporation subject to its jurisdiction for the transportation of persons or property within the state, or that the regulations or practices of such common carrier, railroad corporation or street railroad corporation affecting such rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in anywise in violation of any provision of law, or that the maximum rates, fares or charges, chargeable by any such common carrier, railroad or street railroad corporation are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, the commission shall with due regard among other things to the estimated prospective earning capacity of such property at the rate of fare at the time fixed and existent and to a reasonable average return upon the value of the property actually used in the public service, and to the necessity of making reservation out of income for surplus and con-

TRANSIT COMMISSION

tendencies, determine the just and reasonable rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed, notwithstanding that a higher or low rate, fare or charge has been heretofore prescribed by general or special statute, contract, grant, franchise condition, consent or other agreement, and shall fix the same by order to be served upon all common carriers, railroad corporations or street railroad corporations by whom such rates, fares and charges are thereafter to be observed, provided, however, anything herein contained to the contrary notwithstanding, that, except in the case of a common carrier other than a street railroad corporation, not proposed by the commission to be included in the plan of readjustment under the provisions of article six of this chapter, the transit commission shall not increase or authorize the increase of any rate of fare prescribed by any such general or special statute, contract, grant, franchise, conditions, consent or other agreement except as part of and as may be provided in such plan of readjustment. Any such change in rate, fare or charge shall be upon such terms, conditions or safeguards as the commission may prescribe.

If it shall be made to appear to the satisfaction of the commission that the public interest requires a change in the rates, fares or charges demanded or collected by any person, firm or corporation subject to its jurisdiction, or that such change is necessary, for the purpose of providing safe, adequate and efficient service, or for the preservation of the property, the commission, upon such terms, conditions or safeguards as it deems proper, may authorize an immediate reasonable temporary increase or decrease in such rates, fares and charges pending a final determination of the rates, fares and charges to be thereafter observed by such person, firm or corporation, provided, however, anything herein contained to the contrary notwithstanding, the transit commission shall not authorize any such change prior to the adoption of a plan of readjustment under the provisions of article six of this chapter, unless, pending the completion of the valuations of the railroad property which it proposes to include in any such plan and during the preparation of such plan, the commission shall, as the result of its studies and investigations, find such change to be necessary in the public interest for the accomplishment of one or more of the purposes to be achieved by such plan as specified in said article, and in such event the commission shall require as conditions precedent to such change the execution of any such stipulations by the railroad companies and others as in its judgment shall be necessary to further and protect the consummation of such plan. The terms, conditions, or safeguards prescribed may include provisions for the purpose for which the additional revenue derived from any such temporary increase may be expended and for the impounding thereof until the same shall be applied to the purposes so specified. At any hearing involving a rate, the burden of proof to show that the change in rate if proposed by the common carrier, or that the existing rate, if on motion of the commission or in a complaint filed with the commission it is proposed to reduce the rate, is just and reasonable shall be upon the common carrier; and the commission may give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

Whenever either commission shall be of the opinion, after a hearing had upon its own motion, or upon a complaint, that the rates, fares or charges demanded, exacted, charged or collected by any common carrier, railroad corporation or street railroad corporation subject to its jurisdiction for excursion, school or family commutation, commutation passenger tickets, half fare tickets for the transportation of children under six years of age, or any other form of reduced rate tickets for the transportation of persons within the state, or joint interchangeable mileage tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand miles or more within the state, or that the regulations or practices of such common carrier, railroad corporation or street railroad corporation affecting such rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in anywise in violation of any provision of law, or that the maximum rates,

STATUTES AMENDED IN 1922

fares or charges collected or charged for any of such forms of reduced fare passenger transportation tickets by any such common carrier, railroad or street railroad corporation are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, and whenever the commission shall be of the opinion after a hearing had upon its own motion or upon a complaint and upon investigation, that the sale of any form or forms of reduced fare passenger ticket heretofore sold or used upon any railroad or street railroad within the state of New York, the use or sale of which ticket or tickets has been discontinued within five years prior to June thirtieth, nineteen hundred and eleven, will be just and reasonable and not in violation of any provision of this chapter or other provision of law, the commission shall, with due regard, among other things, to a reasonable average return upon the value of the property actually used in the public service and to the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, fares and charges to be thereafter observed and enforced as the maximum to be charged for such mileage, excursion, school or family commutation, commutation, half fare or any other form or reduced rate tickets for the transportation of persons, or joint interchangeable mileage tickets with special privileges as aforesaid, and shall order the sale and use thereof to be restored, or any of the kinds of tickets herein specified or any other form of reduced rate ticket for the transportation of persons within the state, upon any railroad or street railroad within this state, upon which railroad or street railroad any such form of ticket or tickets for the transportation of persons within the state, have, within five years prior to June thirtieth, nineteen hundred and eleven, been sold or used, and shall determine and prescribe the reasonable and just rates, fares and charges to be thereafter observed and enforced as the maximum to be charged for any of such form of ticket or tickets for the transportation of persons within the state, all of which acts fixing such rates, fares and charges or requiring the restoration of, sale and use of any of such forms of ticket or tickets, shall be by order to be served upon all common carriers, railroad corporations and street railroad corporations by whom such rates, fares and charges or restoration of, sale or use of such ticket or tickets are thereafter to be observed.

§ 3. Subdivision four of section forty-nine of such chapter, as last amended by chapter one hundred and thirty-four of the laws of nineteen hundred and twenty-one, is hereby amended to read as follows:

4. If the commission shall be of the opinion that through cars for the transportation of property should be operated over the tracks of said common carriers, railroad corporations and street railroad corporations and that switch connection or interchange track at a connecting point, if not already existing, should be constructed and maintained by such common carriers, railroad corporations and street railroad corporations, to the end that property may be carried without change of cars, the commission shall have power after a hearing to require by order said common carriers, railroad corporations and street railroad corporations to receive from each other and transport for each other such cars over each other's tracks by way of such switch connection or interchange track, and if no such switch connection or interchange track exist to construct and maintain said switch connection or interchange track, and to make within a specified time not less than thirty days an agreement between them as to the terms of such receipt and transportation of cars, and if so required as to the division of the expense of such construction and maintenance of switch connection or interchange track; and in case such agreement be not so made within the time so specified, the commission shall after a hearing declare by supplemental order the terms and conditions upon which such cars shall be received and transported, and if so required the portion of such expense to which each common carrier or corporation affected thereby shall be entitled and the manner in which any sums of money to which any such common carrier or corporation is entitled shall be paid and secured, and such supplemental order shall take effect as part of the original order from the time such supplemental order shall become effective. Nothing in this subdivision shall be construed to require a

TRANSIT COMMISSION

through route between railroad corporations and street railroad corporations between points reached by such railroad corporations.

In case upon the termination of a lease or otherwise the owner or lessor* of a rapid transit railroad resumes operation thereof and thereupon such owner or lessor or the lessee discontinues or threatens to discontinue or refuses or threaten to refuse to permit operation over any extension or extensions of such rapid transit railroad or railroads or any of them, or discontinues or threatens to discontinue or refuses or threatens to refuse to permit operation over other railroads on which such lessee had operated under trackage rights, then and in either of those events the commission may order that through cars for the transportation of passengers shall be operated over such extension or extensions and over the tracks of such other railroad over which such lessee may have had trackage rights, and the commission shall have power, after a hearing, to require by order such operating, including the right to order such switch or other connections or interchange tracks as may be necessary, and if so required, to determine as to the division of the expense of the maintenance and operation thereof. The commission may, after a hearing, prescribe the terms and conditions upon which such operations shall be conducted and the manner in which receipts and expenses shall be apportioned.

Pending the hearing or hearings provided for herein, and the determinations, and orders of the commission thereon, the commission shall have power, if in its judgment the public interest requires it, to issue a temporary order requiring said rapid transit railroad companies to receive from each other and transport for each other, such cars over each other's tracks by way of switch connection or interchange track, and if no such switch connection or interchange track exists, to construct and maintain said switch connection or interchange track; and upon the completion of said hearing or hearings, and the determinations and orders of the commission thereafter made, the terms of the receipt and transportation of cars, and the readjustment of compensation and expense involved, shall take effect as of the original date of such temporary order of the commission.

If upon the expiration or earlier termination of a lease, the free transfer or interchange of passengers, theretofore in effect and permitted by the lessee of a rapid transit railroad at any point or points between the lines of the rapid transit railroads owned or leased and operated by it, is discontinued or is threatened to be discontinued, the commission shall have power by order to require the companies, by which the said lines of rapid transit railroads may be operated after the termination of the lease, to continue or re-establish such through routes formerly existing, and to establish joint rates, fares and charges for the transportation of passengers thereon in the manner provided by subdivision three of this section.

Pending the hearing or hearings provided for herein, and the determinations and orders of the commission thereon, the commission shall have power to issue a temporary order requiring the companies then operating said lines of rapid transit railroad to restore the said free transfer or interchange of passengers at the point or points on said rapid transit railroad lines where the said free transfer or interchange was formerly in effect and permitted; and upon the completion of said hearing or hearings, and the determinations and orders of the commission thereafter made, the terms and conditions under which the portion of said joint rates, fares and charges to which each company shall be entitled and the manner in which the same shall be paid and secured, shall take effect as of the original date of such temporary order of the commission.

§ 4. Section one hundred and six of such chapter, as last amended by chapter three hundred and thirty-five of the laws of nineteen hundred and twenty-one, is hereby amended to read as follows:

§ 106. *Commission to prepare plan of readjustment.* The commission

* So in original. [Word misspelled.]

STATUTES AMENDED IN 1922

after making the necessary studies and investigation shall prepare a plan of readjustment for the relief of the emergency which is hereby declared to exist, and for the improvement of transit in such city. Such plan shall contain provisions, which in the judgment of the commission, will accomplish as nearly as may be the following four main purposes: (1) the combination, rehabilitation, improvement and extension of existing railroads so that service thereon may be increased and improved to the fullest extent possible, (2) the receipt as soon as practicable by the city of sufficient returns from the operation of the railroads so that the corporate stock or bonds issued by the city for the construction of rapid transit railroads may be exempted in computing the debt incurring power of the city under the constitution of the state, and (3) the assuring to the people of the city the continued operation of the railroads at the present or lowest possible fares consistent with the just valuations of the railroads and their safe and economical operation. The commission shall also endeavor to include in the plan of readjustment appropriate provision for the protection of tort creditors. Without limiting the authority and discretion of the commission, it shall consider the incorporation in the plan of provisions whereby the title to such railroads as are not already owned by the city and whose ownership thereby is deemed by the commission to be desirable may be vested in the city in return for a lease of such railroads by the city, and in the event of the incorporation of such provision in the plan the commission shall outline an arrangement whereby outstanding securities of the railroad companies may be exchanged for new securities and the valuation of the railroads, determined as hereinafter provided, amortized. The commission may provide in any contract or in any modification of an existing contract that the payment of interest and dividends may be deferred for a period to be fixed by the commission, and not to exceed two years from the delivery of such contract or such modification, in order to provide funds for the prompt reorganization and rehabilitation of the railroads.

In connection with the preparation of such plan the commission shall cause a valuation to be made of the property, other than franchises or going value, necessarily used in public service of the railroads it proposes to include therein. Such valuation shall be made with due regard to the estimated prospective earning capacity of the property necessarily used in the public service at the rate or rates of fare that the company prior to the taking effect of this act was entitled to charge in view of the provisions of the contract or franchise under which the property is operated or held or of any lawful order in force fixing or regulating rates of fare and of the competition of other lines and with due regard to all other pertinent facts and conditions; but such valuation shall not in any case exceed the fair reconstruction cost of the property less depreciation. Such valuation shall be in such detail and shall include the elements of cost or values and shall be made in such manner as the commission may prescribe. Such valuation as finally determined by the commission and incorporated in the contracts shall be the basis for all allowances to the railroad companies under the plan and for thereafter fixing the returns under the plan and the contracts entered into thereunder on the property so valued, anything in this chapter to the contrary notwithstanding.

In connection with the preparation of the plan of readjustment the commission shall investigate and give consideration to the possibility of including in the plan provision for railroads operating between a point or points within the city and a point or points without the city and for connecting railroads whose lines stop at or near the city line.

In the preparation of the plan of readjustment the commission shall consider the incorporation in the contracts to be entered into to carry such plan into effect of provision for a board of control to have supervision and control over the management and operation of the railroads included in the plan and in such contracts and for proper representation thereon of the city and of the railroad companies and of any other interest which the commission decides should also be represented thereon.

When organized by the commission, such board of control shall be a body

TRANSIT COMMISSION

politic and corporate, to be known and designated as the board of transit control, with authority to issue bonds and other evidences of indebtedness; to hold the stock and securities of subsidiary operating and other corporations; to exercise supervision and control over the management and operation of the railroads included in the plan as therein provided; to adopt and from time to time amend by-laws, and to have all the powers necessary or incidental to the effective performance of the duties imposed upon it by the plan of readjustment and the contracts entered into thereunder. Such organization of the board of transit control shall be evidenced by the commission filing in the office of the secretary of state a certified copy of such by-laws, together with a certified copy of the minutes of the proceedings of the transit commission in respect of such organization. In order to aid and facilitate the plan of readjustment the members of the commission may, in addition to their other duties, serve as members of the board of transit control for a period not to exceed the first year of operation under the plan of readjustment.

If under the plan of readjustment the title to the railroads is to be vested in the city under contract provision to the effect, in substance, that title shall first pass, subject to specified liens, to an intervening corporation to be organized by the commission for such purpose, in exchange for bonds of such intervening corporation, and that the title to the railroads to be transferred by such intervening corporation to the city in return for a lease or leases to such intervening corporation or to other corporations organized by the commission* for operating the railroad, the board of transit control shall constitute and be such intervening corporation, with full power and authority to perform and carry out the provisions of the contract or contracts or modification of contracts executed under the plan of readjustment.

The board of transit control shall cause to be organized and incorporated such subsidiary operating companies as may be deemed by the commission to be necessary for the purpose of operating the whole or any part of the system provided for under the plan of readjustment. Any such subsidiary operating companies created solely for the purpose of carrying out the plan of readjustment shall be organized by filing in the office of the secretary of state an appropriate certificate of incorporation, prepared and executed by the members of the board of transit control, in which certificate shall be set forth the name of the company, the number of shares of its stock, the amount of its capital which may be nominal, the names and addresses of the directors and a general description of the routes or system which the company is to operate. Said certificate may also contain authorization for the operation by such company of future-built extensions to such routes or systems. Upon filing the certificate of incorporation the board of transit control shall, by written or printed notice of ten days, served personally or by mail, call a meeting of the then registered holders of all securities that have been issued by the board of transit control in exchange for the railroads included in the group or system to be operated by such subsidiary company, and appoint inspectors of election to serve thereat. At such meeting, or at any subsequent one to which the same may be adjourned a majority in amount of such securities represented may elect persons, of a number to be theretofore determined by the board of transit control, not less than nine, who shall be directors for one year of the corporation formed for the purpose of operating such railroads. Within ten days after the election of such directors the board of transit control shall deliver to them a certificate in duplicate, setting forth the certificate of incorporation and organization of the corporation for the purposes therein mentioned, and within five days after the reception by them of such certificate, such directors shall file it in the office of the secretary of state, and a duplicate of the same in the office of the clerk of the county wherein such railroad shall have its principal office, and thereupon the persons who have so subscribed such certificate of incorporation shall be a corporation by the name specified in such

* So in original. [Word misspelled.]

STATUTES AMENDED IN 1922

certificate, and be subject to the duties, liabilities and restrictions of such corporation. The board of transit control may provide in the certificate of incorporation of such companies that the right to elect directors thereof shall be vested in others than the stockholders in accordance with the conditions and stipulations contained in the contract or contracts or modification of contracts executed under or in pursuance of the plan or* readjustment.

Every such corporation shall have power, in addition to the powers conferred by the general and stock corporation laws, to exercise all of the powers of the railroad companies whose properties have been, as in this act authorized, vested in the city and leased to such subsidiary operating companies, and all of the powers conferred by the railroad law, being chapter forty-nine of the consolidated laws, and by chapter four of the laws of eighteen hundred and ninety-one, as amended.

§ 5. This act shall take effect immediately.

LAWS OF NEW YORK.—By Authority

CHAPTER 482

AN ACT to amend the public service commission law, in relation to the transportation of passengers.

Became a law April 5, 1922, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section thirty-four of chapter four hundred and eighty of the laws of nineteen hundred and ten, entitled "An act in relation to the public service commission and the transit commission, constituting chapter forty-eight of the consolidated laws," such title having been so amended by chapter one hundred and thirty-four of the laws of nineteen hundred and twenty-one, is hereby amended to read as follows:

§ 34. *False billing, et cetera, by carrier or shipper.* No common carrier or any officer or agent thereof or any person acting for or employed by it, shall assist, suffer or permit any person or corporation to obtain transportation for any passenger or property between points within this state at less than the rates then established and in force in accordance with the schedules filed and published in accordance with the provisions of this chapter, by means of false billing, false classification, false weight or weighing, or false report of weight, or by any other device or means. No person, corporation or any officer, agent or employee of a corporation, who shall deliver property for transportation within the state to a common carrier, shall seek to obtain such transportation for such property at less than the rates then established and in force therefor, as aforesaid, by false billing, false or incorrect classification, false weight or weighing, false representation of the contents of a package, or false report or statement of weight, or by any other device or means, whether with or without the consent or connivance of the common carrier, or any of its officers, agents or employees. No person shall obtain transportation for himself, herself, or others or shall avail himself, herself or others of any means of transportation at rates other than or different from those prescribed in the schedules of rates filed and published, or in violation of the conditions attached to any reduced rate ticket, provided such conditions are contained in the filed and published schedules. Nothing in this section shall be deemed to limit, modify or change the provisions of section thirty-three and section thirty-three-a of the public service commission law.

§ 2. This act shall take effect immediately.

* So in original. [Should be "of"]

THE RAILROAD LAW

of the

STATE OF NEW YORK

Amendment enacted during the Legislative Session of 1922.

The following are the laws, affecting the Transit Commission, its jurisdiction, duties or powers, enacted by the 1922 Legislature which either amended sections of the Railroad Law or added new sections thereto:

LAWS OF NEW YORK.—By Authority

CHAPTER 336

AN ACT to amend the railroad law, in relation to coal jimmies and caboose cars.

Became a law March 28, 1922, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section seventy-eight of chapter four hundred and eighty-one of the laws of nineteen hundred and ten, entitled "An act in relation to railroads, constituting chapter forty-nine of the consolidated laws," as last amended by chapter four hundred and thirty of the laws of nineteen hundred and twenty, is hereby amended to read as follows:

§ 78. *Coal jimmies and caboose cars.* The use of cars known and designated as "coal jimmies" in any form and the use of any car as a caboose unless it shall have a suitable and safe platform at each end thereof, and the usual railing for the protection of persons using such platform, shall be unlawful within the state, except upon any railroad whose main line is less than fifteen miles in length and whose average grade exceeds two hundred feet to the mile. This section shall not be construed to authorize the interchange of such "coal jimmies" with, and the use thereof upon, railroads of more than fifteen miles in length or whose average grade is less than two hundred feet to the mile.

From and after the first day of July, nineteen hundred and twenty-three it shall be unlawful for any corporation or individual to man, equip, or to use within the state on any railroad a caboose car, or car to serve the purpose of a caboose car, which shall be less than twenty-four feet in length exclusive of the platform, or which shall have a center constructive strength less than that of the fifty-ton freight cars built according to master car builders' standards. Such caboose or other equivalent car shall be constructed with steel center sills with two four-wheeled trucks; with each platform not less than twenty-four inches wide, with proper guard rails, grab irons and steps, which shall be equipped with a suitable rod, board or other guard designed to prevent slipping from the car step. Each such car shall have a door at each end and shall be equipped with four separate sleeping berths not less than six feet and two inches in length. Each such car shall contain a properly furnished toilet room, sink, icebox, water cooler, clothing lockers, and with a cupola of sufficient size to accommodate at least two men. Whenever any caboose or other car used for like purpose now in use by any such railroad company shall, after this act goes into effect, be brought into any shop for general repairs it shall be unlawful to again put the same into use within this state, as a caboose or other car used for like purpose unless it be equipped as provided in this act.

This section shall not apply to cabooses or other equivalent cars used in

STATUTES AMENDED IN 1922

the switching service or on trains operated wholly within twenty-five miles of yard limits.

Any violation of the provisions of this section shall be a misdemeanor, punishable by a fine of not less than one hundred dollars nor more than five hundred dollars for each separate offense. This penalty is in addition to that provided for in section eighty-one of this chapter.

§ 2. This act shall take effect immediately.

LAWS OF NEW YORK.—By Authority

CHAPTER 504

AN ACT to amend the railroad law, by adding a new section providing that a domestic railroad corporation, other than a street railroad corporation, owning at least three-fourths of the capital stock of another domestic railroad corporation, other than a street railroad corporation, may acquire the minority stock of such other domestic railroad corporation upon an appraised valuation in aid of merger.

Became a law April 6, 1922, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter four hundred and eighty-one of the laws of nineteen hundred and ten, entitled "An act in relation to railroads, constituting chapter forty-nine of the consolidated laws," is hereby amended by adding thereto at the end of article four thereof a new section, to be section one hundred and sixty, and to read as follows:

§ 160. *Condemnation of minority stock in aid of merger.* A domestic railroad corporation, other than a street surface railroad corporation, owning and operating a railroad wholly in this state, which has lawfully acquired at least three-fourths of the issued and outstanding shares of the capital stock of another domestic railroad corporation, other than a street surface railroad corporation, owning and operating a railroad wholly in this state, and which desires to acquire the remainder of the shares of such outstanding stock and to merge such other corporation pursuant to section fifteen of the stock corporation law, and cannot agree with the holders for the purchase thereof, may acquire the remainder of the shares of said outstanding stock as herein provided, if the public service commission, or the transit commission if the railroads or both corporations are exclusively within a city containing a population of over one million inhabitants according to the last preceding federal census or state enumeration, shall have first granted its permission for the acquisition and merger. Such corporation may apply by petition to the supreme court, at any special term thereof held in the judicial district wherein is located the principal office of the corporation, the shares of whose stock are sought to be acquired, for the appointment of three persons to appraise the value of the said shares of stock. The petition shall set forth fully the facts justifying such application under the provisions of this section, and shall state the names of each of the holders of record of such shares of stock. Notice of the time and place of the presentation of such application together with a copy of the petition, must be served upon each of the holders of record of such stock and upon the public service commission, or the transit commission if the railroads of both corporations are exclusively within a city containing a population of over one million inhabitants according to the last preceding federal census or state enumeration, at least twenty days before such presentation. Service of the petition and notice must be made in the same manner as the service of a summons in an action in the supreme court is required to be made. If the court shall find, after

TRANSIT COMMISSION

hearing all the interested parties who may appear, that the acquisition by the petitioner of such remaining stock will be for the public interest, the court shall appoint three disinterested appraisers, and designate the time and place of their proceedings. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and appraise the value per share of such stock, and shall return to the court their written report of such appraisement, together with the minutes of testimony taken by them. They shall be entitled to the same fees and necessary expenses as are commissioners appointed in proceedings for the condemnation of real property, which fees and expenses shall be paid by the petitioner. Upon confirmation of the report of the appraisers by the court, the court shall make a final order adjudging that upon payments by the petitioner either directly or into court as hereinafter provided, the holders of record of the stock which has been appraised shall cease to have any interest in such stock, and all of their right, title and interest in said stock shall vest in the petitioner. The petitioner may pay the value of the stock as appraised directly to the several holders of record thereof or any of them, upon the surrender to petitioner of the certificates representing the stock paid for with duly executed powers of attorney for transfer to the petitioner, or the petitioner may pay the value as appraised into court for the account of the several holders or any of them. The holders of stock before receiving the amounts so paid into court shall deposit in court for delivery to the petitioner their certificates of stock with duly executed powers of attorney for transfer to the petitioner, but the right, title and interest in the stock shall vest in the petitioner immediately upon the payment into court of the value as appraised. The final order shall direct that after the expiration of sixty days from the entry thereof any holder of stock which has been appraised but has not been paid for either directly or by payment into court may, upon filing in the office of the clerk of the county where the petitioner's principal place of business is situated for delivery to the petitioner the certificate or certificates of such stock with duly executed powers of attorney for transfer to the petitioner, enter a money judgment against the petitioner for the amount at which said stock has been appraised, and may have execution thereon. Upon satisfaction of such judgment all the right, title and interest in and to such stock shall vest in the petitioner and the certificate or certificates with the powers of attorney shall be delivered to the petitioner.

§ 2. This act shall take effect immediately.

LAWS OF NEW YORK.—By Authority

CHAPTER 600

AN ACT to amend the railroad law, in relation to construction of road and use of existing tracks in street where other road is built.

Became a law April 12, 1922, with the approval of the Governor. Passed. three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section one hundred and eighty-three of chapter four hundred and eighty-one of the laws of nineteen hundred and ten, entitled "An act in relation to railroads, constituting chapter forty-nine of the consolidated laws," is hereby amended to read as follows:

§ 183. *Construction of road in street where other road is built.* No street surface railroad corporation shall construct, extend or operate its road or tracks in that portion of any street, avenue, road or highway, in which a street surface railroad is or shall be lawfully constructed, except for necessary crossings, or, in cities, villages and towns of less than one

STATUTES AMENDED IN 1922

million two hundred and fifty thousand inhabitants over any bridges, without first obtaining the consent of the corporation owning and maintaining the same, except that any street surface railroad company may use the tracks of another street surface railroad company for a distance not exceeding one thousand feet, and if in a city having a population of less than thirty-five thousand inhabitants, for a distance not exceeding fifteen hundred feet, and in cities, villages and towns of less than one million two hundred and fifty thousand inhabitants, shall have the right to lay its tracks upon, and run over and use any bridges used wholly or in part as a footbridge, whenever the court upon an application for commissioners shall be satisfied that such use is actually necessary to connect main portions of a line to be constructed or operated as an independent railroad, or to connect said railroad with a ferry, or with another existing railroad, and that the public convenience requires the same, in which event the right to use shall only be given for a compensation to an extent and in a manner to be ascertained and determined by commissioners to be appointed by the courts as is provided in the condemnation law, or by the public service commission in cases where the corporations interested shall unite in a request for such commission to act. Such commissioners in determining the compensation to be paid for the use by one corporation of the tracks of another shall consider and allow for the use of the tracks for all injury and damage to the corporation whose tracks may be so used. Any street surface railroad corporation may, in pursuance of a unanimous vote of the stockholders voting at a special meeting called for that purpose by notice in writing, signed by a majority of the directors of such corporation, stating the time, place and object of the meeting, and served upon each stockholder appearing as such upon the books of the corporation, personally or by mail, at his last known post-office address, at least sixty days prior to such meeting, guarantee the bonds of any other street surface railroad corporation whose road is fully or partly in the same city or town or adjacent cities or towns. Notwithstanding any of the provisions contained in this section, any street surface railroad corporation having a franchise to construct, maintain and operate in any city by underground electric power over any one street or avenue for a distance of more than three miles thereon, and operating under such franchise by underground electric power on such street or avenue over tracks which extend more than four thousand feet on each end of the tracks of another street surface railroad corporation located on such street or avenue and operated by underground electric power, may use the tracks of such other street surface railroad corporation located on such street or avenue for a distance not exceeding two thousand five hundred feet and shall pay therefor such compensation as may be agreed upon between such street railroad corporations, or if such street railroad corporations cannot so agree, such compensation shall be ascertained and determined by commissioners to be appointed by the courts as provided in the condemnation law.

§ 2. This act shall take effect immediately.

LAWS OF NEW YORK.—By Authority

CHAPTER 601

AN ACT to amend the railroad law, in relation to inspection of boilers and other locomotive equipment.

Became a law April 12, 1922, with the approval of the Governor. Passed. three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section seventy-two of chapter four hundred and eight-one of the laws of nineteen hundred and ten, entitled "An act in relation to rail-

TRANSIT COMMISSION

roads constituting chapter forty-nine of the consolidated laws." is hereby amended to read as follows:

§ 72. *Inspection of locomotives.* It shall be the duty of every railroad corporation which operates a railroad not exceeding fifty miles in length by steam power, within this state, and of any other corporation (except a railroad corporation), partnership or person owning or operating a locomotive or locomotives propelled by steam, which may at any time pass over or on the tracks of any railroad corporation within the state or over or on any track parallel to and immediately adjacent to any track of any railroad corporation within the state, and of the directors, managers or superintendents of such corporations, to cause thorough inspections to be made of the boilers, safety appliances, machinery, and all appurtenances thereto of all the steam locomotives which may be owned or operated by such corporations, partnerships or persons within this state. Such inspections shall be made at least every three months under the direction and superintendence of said corporations, partnerships or persons, by persons of suitable qualifications and attainments to perform the services required of inspectors of boilers and other locomotive equipment, and who from their knowledge of the construction and use of boilers and other locomotive equipment and the appurtenances therewith connected, are able to form a reliable opinion of the strength, form, workmanship and suitability of boilers and other locomotive equipment, to be employed without hazard of life, from imperfections in material, workmanship or arrangement of any part of such locomotive and appurtenances. All boilers used on such locomotives shall comply with the following requirements: The boilers must be made of good and suitable materials; the openings for the passage of water and steam respectively, and all pipes and tubes exposed to heat shall be of proper dimensions; the safety valves, fusible plugs, water glasses, gauge cocks and steam gauges, shall be of such construction, condition and arrangement that the same may be safely employed in the active service of said corporations, partnerships or persons without peril to life; and each inspector shall satisfy himself by thorough examination that said requirements have been fully complied with. No boiler, nor any connection therewith, shall be approved which is unsafe in its form, or dangerous from defects, workmanship or other cause. The person or persons who shall make the said inspections if he or they approve of the boiler and other locomotive equipment and the appurtenances thereto throughout, shall make and subscribe his or their name to a certificate which shall contain the number of each locomotive and boiler inspected, the date of inspection, the condition of the boiler, and other locomotive equipment inspected, and such other details as may be prescribed by the public service commission. Every certificate shall be verified by the oath of the inspector, and he shall cause such certificate to be filed in the office of the public service commission, within ten days after each inspection shall have been made, and also a copy thereof with the chief operating officer or employee of such corporation, partnership or person having charge of the operation of such locomotive; a copy shall also be placed by such officer or employee in a conspicuous place in the cab connected with such locomotive, and there kept framed under glass. The public service commission shall have the power, from time to time, to formulate rules and regulations for the inspection and testing of locomotives as aforesaid, and may require the removal of incompetent inspectors of locomotives under the provisions of this section. If it shall be ascertained by such inspection and test or otherwise, that any locomotive is unsafe for use, the same shall not again be used until it shall be repaired, and made safe, so as to comply with the requirements of this section. Every such corporation, director, manager or superintendent, partnership or person violating any of the provisions of this section shall be liable to a penalty, to be paid to the people of the state of New York, of one hundred dollars for each offense, and the further penalty of one hundred dollars for each day it or he shall omit or neglect to comply with said provisions, and the making or filing of a false certificate shall be a misdemeanor, and every inspector who willfully certifies falsely touching any steam locomotive, or any

STATUTES AMENDED IN 1922

appurtenance thereto belonging, or any matter or thing contained or required to be contained in any certificate, signed and sworn to by him, shall be guilty of a misdemeanor. The public service commission shall enforce the provisions of this section as to penalties.

§ 2. Section seventy-three of such chapter, as last amended by chapter eight hundred and sixty-seven of the laws of nineteen hundred and twenty, is hereby amended to read as follows:

§ 73. *Inspectors of locomotives.* Inspectors shall be appointed by the public service commission, who shall be familiar with the construction and operation of steam locomotives and their appurtenances, whose salaries shall be fixed by the commission. They shall, under the direction of the commission, inspect locomotives used by corporations operating steam railroads within the state, or locomotives owned or operated by corporations, partnerships or persons on or over any track adjacent to or parallel with any track of any railroad corporation within the state, and may cause the same to be tested by hydrostatic tests and shall perform such other duties in connection with the inspection and test of locomotives as the commission shall direct. But this section shall not relieve any corporation, partnership or person from the duties imposed by the preceding section.

§ 3. This act shall take effect immediately.

LAWS OF NEW YORK.—By Authority

CHAPTER 650

AN ACT to amend the railroad law, in relation to maintenance of bridges over railroads.

Became a law April 13, 1922, with the approval of the Governor. Passed. three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section ninety-three of chapter four hundred and eighty-one of the laws of nineteen hundred and ten, entitled "An act in relation to railroads, constituting chapter forty-nine of the consolidated laws," as last amended by chapter six hundred and ninety-eight of the laws of nineteen hundred and twenty-one, is hereby amended to read as follows:

§ 93. *Repair of bridges and subways at crossings.* When a highway crosses a railroad by an overhead bridge, the framework of the bridge and its abutments shall be maintained and kept in repair by the railroad corporation and the roadway thereover and the approaches thereto shall be maintained and kept in repair by the municipality having jurisdiction over and in which the same are situated; except that in the case of any overhead bridge constructed prior to the first day of July, eighteen hundred and ninety-seven, the roadway over and the approaches to which the railroad corporation was under obligation to maintain and repair, such obligation shall continue, provided the railroad corporation shall have at least ten days' notice of any defect in the roadway thereover and the approaches thereto, which notice must be given in writing by the town superintendent of highways or other duly constituted authority, and the railroad corporation shall not be liable by reason of any such defect unless it shall have failed to make repairs within ten days after the service of such notice upon it; and except that in the case of any overhead bridge constructed in a town after January first, eighteen hundred and ninety-seven, and prior to January first, nineteen hundred and ten, if the town paid twenty-five per centum of the cost of such construction and such bridge, when completed, was upon a state highway and the state, prior to January ninth, nineteen hundred and sixteen, made any repairs to the approaches to or roadway on such bridge, the

TRANSIT COMMISSION

roadway on such bridge and the approaches thereto shall be maintained and kept in repair hereafter by the state, under the supervision and control of the state commission of highways in the manner provided by the highway law for the maintenance and repair of state and county highways. When a highway passes under a railroad, the bridge and its abutments shall be maintained and kept in repair by the railroad corporation, and the subway and its approaches shall be maintained and kept in repair by the municipality having jurisdiction over and in which the same are situated. In case such highway is a part of a state or county highway constructed or improved as provided in the highway law, the roadway over such railroad or the subway underneath the same, and the approaches thereto, shall be maintained and kept in repair under the supervision and control of the state commission of highways in the manner provided by the highway law for the maintenance and repair of state and county highways where such roadway, subway or approaches, or any of them, have been constructed or improved as a part of a state or a county highway.

§ 2. This act shall take effect immediately.

ADDITIONAL LAWS of the STATE OF NEW YORK.

Enacted during the Legislative Session of 1922, which affect the Transit Commission, its jurisdiction, duties or powers.

LAWS OF NEW YORK.—By Authority

CHAPTER 102

AN ACT authorizing the transit commission to extend for a further period of one year the operation of the street railway line of the Nassau Electric Railroad Company, in the borough of Brooklyn, commonly known as the Church avenue line, without exchanging transfers with connecting lines, notwithstanding the provisions of any charter, franchise, agreement or statute.

Became a law March 10, 1922, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The transit commission on its own motion or on application made, may, if in its opinion the public interest will be served thereby, make an order suspending and waiving the provisions of any charter or franchise or agreement whereby the Nassau Electric Railroad Company in operating the street railway line commonly known as the Church avenue line, is obliged to issue, receive or exchange transfers to and from connecting lines and permitting during such period whoever is operating said railroad along said line to operate without issuing, receiving or exchanging such transfers, notwithstanding the provisions of any special or general law. Such order shall remain in effect for such period additional to that authorized by chapter two hundred and thirty-three of the laws of nineteen hundred and twenty-one, as the transit commission may prescribe, not exceeding one year.

2. This act shall take effect immediately.

STATUTES AMENDED IN 1922

LAWS OF NEW YORK—By Authority

CHAPTER 182

AN ACT authorizing the transit commission to extend for a period of one year the operation of the street railway line of the Nassau Electric Railroad Company, in the borough of Brooklyn, commonly known as the Park avenue line, without exchanging transfers with connecting lines, notwithstanding the provisions of any charter, franchise, agreement or statute.

Became a law March 23, 1922, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The transit commission, on its own motion or on application made, may, if in its opinion the public interest will be served thereby, make an order suspending and waiving the provisions of any charter or franchise or agreement whereby the Nassau Electric Railroad Company, in operating the street railway line commonly known as the Park avenue line, is obliged to issue, receive or exchange transfers to and from connecting lines and permitting during such period whoever is operating said railroad along said line to operate without issuing, receiving or exchanging such transfers, notwithstanding the provisions of any special or general law. Such order shall remain in effect for such period as the transit commission may prescribe, not exceeding one year.

2. This act shall take effect immediately.

EDITORIAL NOTE

The head-notes or *syllabi*, statements of additional facts, quotations from Orders or from the opinions of Counsel, and other matter preceding the Opinions and Decisions of the Commission as set out in this volume, were not parts of the Opinions as adopted by the Commission. They have been added for the convenience of the reader in interpreting the decisions or the circumstances thereof.

In the preparation of the *syllabi* every point or proposition discussed in the Opinion adopted has usually been included. Wherever feasible, the exact language employed in the Opinion has been embodied in the *Syllabi*.

Opinions are not written and adopted by the Commission in all matters passed upon. It is the practice of the Commission to file written Opinions in such contested matters coming before it as seem to require a careful statement of the grounds of the decision or a permanent public record of the facts in relation thereto. Upon *ex parte* or informal applications, written Opinions also are sometimes filed, where the facts are complicated or of possible public moment, or where an interpretation of statutes is required.

The Opinions and Memoranda relate to two distinct functions of the Commission, namely, its regulatory function and its powers under the Rapid Transit Act providing for construction of rapid transit railroads. In the volumes they appear approximately in chronological order and no attempt is made to segregate them. In the index, however, the two classes are separated.

The memoranda of cases in which Opinions are not rendered appear at the end of the bound volume containing the Opinions for the particular period. In cases in which an Opinion is filed at some stage of the proceedings, it often happens that Orders are subsequently entered therein without the writing of Opinions. Therefore, to obtain a complete "case record" of any proceeding, not only the index to the Opinions, but also the index to the memoranda, at the end of the Volume should be consulted.

Orders adopted are included in this series of Reports, in whole or in part, only when important to an understanding of the Opinion or of the action taken by the Commission.

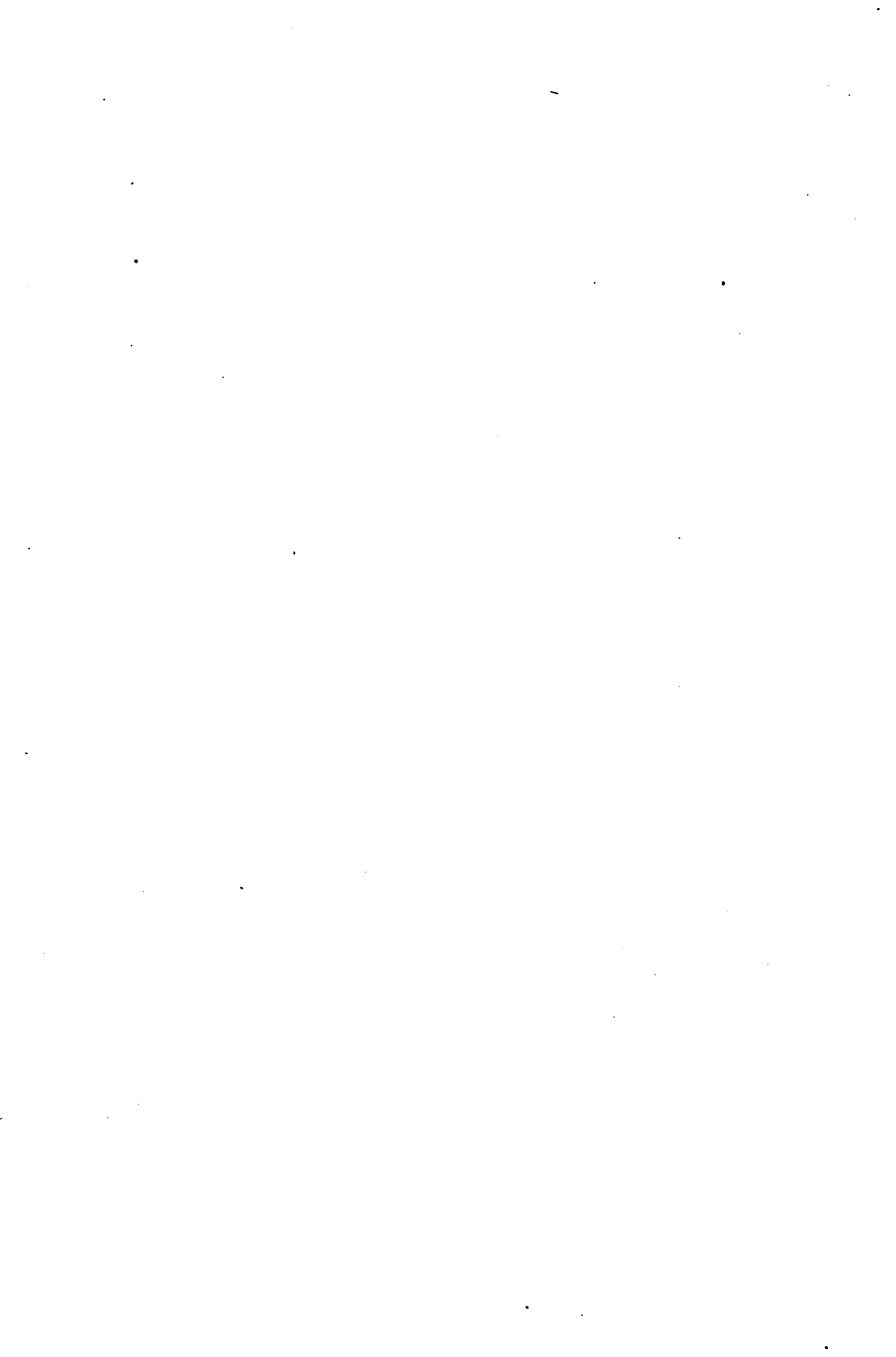
When any determination of the Commission is passed upon by a Court, State or Federal, the facts in relation to such action are set out in this series of Reports and the Opinion or memorandum handed down by the Court reprinted herein, at the earliest practicable time after the filing of the judicial decision in question. Where practicable, the decision of the Court is set out in connection with the Opinion of the Commission in the particular case judicially passed upon; otherwise it is printed immediately following the *indices*.

It is suggested that this series of Reports of Decisions may advantageously be cited as—T. C. R. (N. Y. City), and that particular Opinions may be cited by their Case or Rapid Transit numbers and by the headings found at the top of the odd-numbered pages or the "short titles" found in the "Table of Cases Reported," which is contained in the *indices* on page i, *ante*.

The Opinions of the Commission will continue to be published monthly in the present pamphlet form. Upon completion of the standard volume, the same will be furnished in a law-buckram binding. The Opinions for the current year comprises Volume II. The opinions for the year 1921, from April 26 to December 31 inclusive, are comprised in Volume I. The Volumes are \$2.00 each. Single monthly pamphlets may be had at twenty-five cents a copy.

New York, December 31, 1922.

JAMES B. WALKER,
Secretary.



In the Matter of the Application of LINDLEY M. GARRISON, as Receiver, of New York Municipal Railway Corporation and as Receiver of New York Consolidated Railroad Company, for an order modifying and supplementing the order of the Public Service Commission for the First District of the State of New York, dated August 15, 1919, in Case No. 2375, and the order of John H. Delaney, as Transit Construction Commissioner, dated August 15, 1919, and the order of the Transit Commission dated May 31, 1921, so as to authorize and consent to the extension of the maturity date of the joint and several certificates of Indebtedness of Lindley M. Garrison, as Receiver of New York Municipal Railway Corporation and as Receiver of New York Consolidated Railroad Company, from February 1, 1922, to February 1, 1923.

CASE No. 2375

Receiver's Certificate—Rapid Transit Railroad Companies—Extension of Time for Payment of Certificates—No Alternative But to Approve Extension—Sale of Properties and Further Disintegration of Brooklyn Rapid Transit System a Calamity—Existing Situation Must be Preserved Pending Working Out of Commission's Plans for Readjustment of Transit—Extension Approved.—The Commission is, therefore, faced with the alternative of approving the extension terms as presented, or of disapproving them and thus subjecting to sale the transit properties covered by the lien of the certificates. Actually there would appear to be no alternative. A sale of these properties and further disintegration of the Brooklyn Rapid Transit system at this time would be a calamity. The existing situation must be preserved pending the working out of the Commission's plans for the readjustment of transit. Therefore, despite its belief that the terms of the extension are excessive, the Commission feels compelled in the public interest to recognize them as the price of keeping the system intact. The extension is, therefore, approved.

Hearings closed January 25, 1922. Order adopted and Opinion approved January 26, 1922.

This proceeding came on before the Commission upon receipt of the following petition of Lindley M. Garrison, as Receiver of the New York Municipal Railway Corporation and of the New York Consolidated Railroad Company dated January 20, 1922.

PETITION

LINDLEY M. GARRISON, as Receiver of New York Municipal Railway Corporation, and as Receiver of New York Consolidated Railroad Company, upon information and belief, respectfully shows to the Commission, as follows:

I. Pursuant to the orders of the District Court of the United States for the Southern District of New York (hereinafter called the "Court"), orders No. 27-X and 27-AX, dated August 12, 1919, order No. 101-B dated February 24, 1921, and order No. 105 dated May 24, 1921, respectively, your petitioner has delivered and sold to the Receiver of Brooklyn Rapid Transit Company his Municipal and Consolidated Receiver's Certificates to the aggregate principal amount of Eighteen Million Dollars (\$18,000,000) said Certificates being dated August 1, 1919 and maturing August 1, 1921. The proceeds derived from the sale of said Certificates were used for the purposes, set forth in said order No. 27-X, of carrying out the construction and equipment requirements of Contract No. 4 with The City of New York, dated March 19, 1913, and of the related Certificates of the same date with respect to additional tracks and for extensions. Fifteen Million Dollars (\$15,000,000) principal amount of said Certificates of Indebtedness were sold to the Brooklyn Rapid Transit Receiver at a price equal to ninety-five per cent. (95%) of the par value thereof, and interest accrued thereon. Upon the maturity of said Fifteen Million Dollars (\$15,000,000) principal amount of Municipal and Consolidated Certificates on August 1, 1921, pursuant to the provisions of said order No. 105, said Certificates were extended for a period of six (6) months, namely, to February 1, 1922, upon the payment of a renewal commission of 2%.

On August 1, 1921 an additional \$3,000,000 of Municipal and Consolidated Certificates issued by your petitioner as Receiver of the New York Municipal Railway Corporation and of the New York Consolidated Railroad Company were, pursuant to said order No. 105, sold by the said Receiver to the Receiver of the Brooklyn Rapid Transit Company at the price of 98, the said additional \$3,000,000 in principal amount of certificates maturing on February 1, 1922.

II. The issuance and delivery of said Fifteen Million Dollars (\$15,000,000) principal amount of Municipal and Consolidated Receiver's Certificates as of August 1, 1919, were consented to and approved by the Public Service Commission for the First District of the State of New York in Case No. 2375, and by John H. Delaney as Transit Construction Commissioner by orders dated August 15, 1919. The issuance and sale, upon the terms hereinabove set forth on August 1, 1921, of the Three Million Dollars (\$3,000,000) additional Municipal and Consolidated Certificates were consented to and authorized by the Transit Commission in Case No. 2375 by order dated May 31, 1921. Said order of the Transit Commission further consented to and authorized the extension of the said Fifteen Million Dollars (\$15,000,000) principal amount of Municipal and Consolidated Certificates then outstanding upon the terms hereinabove set forth. Your petitioner begs leave to refer to the previous applications of your petitioner for the approval and consent of the Public Service Commission, the Transit Construction Commissioner, and the Transit Commission and to the orders issued thereon, all of which are on file with your Commission, with the same force and effect as if herein set forth at length.

III. The Eighteen Million Dollars (\$18,000,000) in principal amount of Municipal and Consolidated Certificates, all of which were issued under the authority and direction of the said orders of the Court, and under the authority of the said orders of the Public Service Commission, the Transit Construction Commissioner, and the Transit Commission, now mature February 1, 1922. In view of the fact that your petitioner is without the necessary funds or the means of obtaining the necessary funds to pay off all of the said Eighteen Million Dollars (\$18,000,000) in principal amount of Certificates at

maturity, it is necessary to arrange an extension of the time for the payment of a part of said Certificates.

IV. Upon the application of your petitioner to the Court, verified the 18th day of January, 1922, the Court, by order No. 118, dated January 20, 1922, authorized and directed your petitioner to pay off and retire on February 1, 1922, Two Million Dollars (\$2,000,000) principal amount of the said Municipal and Consolidated Receiver's certificates owned by the Brooklyn Rapid Transit Receiver, upon the surrender of said Receiver's Certificates for cancellation; and to extend the remaining Sixteen Million Dollars (\$16,000,000) principal amount of said Municipal and Consolidated Certificates bearing 6% interest, for a period of one year from the maturity thereof, viz.: from February 1, 1922, to February 1, 1923; and in consideration of such extension to pay the holders thereof a commission of two per cent. (2%) upon the face amount of the Sixteen Million Dollars (\$16,000,000) of Certificates so extended. A copy of said application of your petitioner and of said order of the Court are attached hereto and made a part of this application.

V. The financial condition of your petitioner, as Receiver of New York Municipal Railway Corporation and as Receiver of New York Consolidated Railroad Company, as defined in Rule VIII of the Rules of Procedure and Regulations Governing Matters before your Commission, is shown by the reports on file with your Commission. Your petitioner has, in all respects, complied with the terms, provisions and conditions of the said orders of the Public Service Commission and the Transit Construction Commissioner, each dated August 15, 1919, and the order of the Transit Commission dated May 31, 1921; and the proceeds derived from the issue, execution and sale of the Eighteen Million Dollars (\$18,000,000) principal amount of said Municipal and Consolidated Certificates, now outstanding, have been applied and/or now are being applied only to the purposes set forth in said order.

WHEREFORE, your petitioner respectfully prays that your Commission may make, grant and enter an order herein modifying and supplementing the said orders of the Public Service Commission and of the Transit Construction Commissioner, each dated August 15, 1919, and the order of the Transit Commission dated May 31, 1921, so as to consent to and authorize:

That the time for the payment of Sixteen Million Dollars (\$16,000,000) principal amount of the said Municipal and Consolidated Certificates shall be extended for a period of one year from the date of maturity thereof on February 1, 1922, namely, to February 1, 1923, and that at the time of the presentation by the holders thereof of the said Sixteen Million Dollars (\$16,000,000) principal amount of said Municipal and Consolidated Certificates heretofore issued, executed and sold, and now outstanding, to have stamped thereon the legend of extension thereof as provided in said order No. 118 of the Court, dated January 20, 1922 that your petitioner pay to or upon the order of the holders thereof a sum equal to two per cent. (2%) of the face amount of said Certificates, in consideration of the consent of the holders thereof to such extension.

Your petitioner further prays that your Commission take immediate action upon this application, and that your petitioner have such other and further relief in respect of the several matters set forth in this application and in said Order No. 118 of the Court, as may be just and reasonable.

Thereafter the Commission on January 20, 1922, adopted an Order in this Case directing that a hearing be held on the above ap-

TRANSIT COMMISSION

plication on January 23, 1922. A hearing was held on that date on January 25, 1922, on which latter date the hearings were closed. On January 26, 1922, the Commission adopted the Extension Order set forth below and approved the Opinion following. Further facts appear in the Order and Opinion.

ORDER CONSENTING TO AND AUTHORIZING THE EXTENSION OF TIME FOR
THE PAYMENT OF RECEIVER'S CERTIFICATES OF INDEBTEDNESS.

Application having been made to the Transit Commission by Lindley M. Garrison, as Receiver of New York Municipal Railway Corporation and as Receiver of New York Consolidated Railroad Company (hereinafter termed the "Municipal and Consolidated Receiver") by his application dated and verified January 22, 1922, for an order modifying and supplementing the certain order heretofore adopted by the Public Service Commission for the First District of the State of New York on August 15, 1919, in Case No. 2375, and the certain order heretofore adopted by John H. Delaney, as Transit Construction Commissioner, on the same date, and the order of the Transit Commission dated May 31, 1921, so as to consent to and authorize:

That the time for the payment of Sixteen Million Dollars (\$16,000,000) principal amount of the Municipal and Consolidated Receiver's certificates be extended for a period of one year from the date of maturity thereof on February 1, 1922, namely, to February 1, 1923, and that at the time of the presentation by the holders thereof of the said Sixteen Million Dollars (\$16,000,000) principal amount of said Municipal and Consolidated Certificates heretofore issued, executed and sold, and now outstanding, to have stamped thereon the legend of extension thereof as provided in order No. 118 of the District Court of the United States for the Southern District of New York, in the case entitled "Westinghouse Electric & Manufacturing Company, plaintiff, against Brooklyn Rapid Transit Company, New York Municipal Railway Corporation, and New York Consolidated Railroad Company, defendants,—Consolidated Cause—In Equity E 15-347," dated January 20, 1922; that your petitioner pay to or upon the order of the holders thereof a sum equal to two per cent. (2%) of the face amount of said Certificate, in consideration of the consent of the holders thereof to such extension.

and a hearing having been duly had upon said application; and it being now the opinion of the Commission that the relief prayed for in said application should be granted;

ORDERED that the said order heretofore adopted by the said Public Service Commission on August 15, 1919, in Case No. 2375, and the said order heretofore adopted by the said Transit Construction Commissioner on the same date, and the order of the Transit Commission adopted May 31, 1921, be, and are hereby, modified and supplemented so as to authorize and consent, and the Commission does hereby authorize and consent:

That the time for the payment of the Receiver's Certificates of the New York Municipal Railway Corporation and New York Consolidated Railroad Company shall be extended for a period of one year from the date of maturity thereof on February 1, 1922, namely to February 1, 1923, and that at the time of the presentation of the Sixteen Million Dollars (\$16,000,000) in principal amount of said Municipal and Consolidated Certificates heretofore issued, executed and sold, and now outstanding, to

have stamped thereon the following legend of extension thereof:

"Interest to February 1, 1922, on the within Certificate has been paid. Payment of the principal of this Certificate has been extended to February 1, 1923, with interest thereon at the rate of 6% per annum, payable semi-annually at the principal office of Central Union Trust Company of New York, in the City of New York, pursuant and subject to the terms and conditions of a supplemental decree filed in the office of the clerk of the United States District Court for the Southern District of New York, January 20, 1922, to all of the terms and conditions of which the holders hereof, by presentation of this Certificate for stamping hereon of this statement and the receipt of the extension commission therein provided, has duly consented."

the said Municipal and Consolidated Receiver shall pay to or upon the order of the holders of said Certificates a sum equal to two per cent. (2%) of the face amount thereof, in consideration for such extension.

ORDERED that the said orders of August 15, 1919, and the order of the Transit Commission of May 31, 1921, are hereby modified and supplemented, and the extension of time for the payment of the Sixteen Million Dollars (\$16,000,000) in principal amount of said Certificates of Indebtedness, heretofore issued and now outstanding, and the payment of a sum equal to two per cent. (2%) of the principal amount thereof in consideration for such extension, are hereby respectively consented to and authorized upon the conditions following, and not otherwise, to wit:

FIRST: That except as modified and supplemented by this order, and except as to the provisions thereof—that they were not to take effect or be of any force or authority unless and until the said Municipal and Consolidated Receiver should affirm and assume the performance of the contracts and Certificates therein referred to and specified—the terms and provisions and the conditions of the said orders of August 15, 1919, and said order of the Transit Commission of May 31, 1921, and of each of them, shall be and remain in full force and effect as if here set out at length as parts of this order, and reference in said respective orders to said Public Service Commission or to said Transit Construction Commissioner shall be deemed for all the purposes of said orders as modified and supplemented by this order to mean and include this commission.

SECOND: That only such portion (if any) of said sum equal to two per cent. (2%) of said Sixteen Million Dollars in principal amount of said Certificates of Indebtedness heretofore issued and now outstanding, to be paid by the Municipal and Consolidated Receiver to the holders of said Certificates as the consideration for the extension thereof, shall be included in the cost or in any deduction from revenue under Contract No. 4 with The City of New York, dated March 19, 1913, and/or under the Allied Certificates of the same date for additional tracks and for extensions as shall be properly included therein in accordance with the terms of said Contract No. 4 and/or said Allied Certificates.

ORDERED that the said Municipal and Consolidated Receiver notify this Commission, within ten (10) days after service upon him of a copy of this order, whether the terms of this order are accepted and will be obeyed.

OPINION

HARKNESS, *Commissioner*: Lindley M. Garrison, as Receiver of the New York Municipal Railway Corporation and as Receiver of the New York Consolidated Railroad Company, by application dated and verified January 20, 1922, applied to the Commission for an order modifying and supplementing the orders of the Public Service Commission for the First District and of the Transit Construction Commissioner, dated August 15, 1919, and the order of the Transit Commission, dated May 31, 1921, so as to consent to and authorize that the time of payment of \$16,000,000 principal amount of Municipal and Consolidated Certificate shall be extended for a period of one year from the date of maturity thereof on February 1, 1922, namely, to February 1, 1923, and that at the time of the presentation by the holders of the said \$16,000,000 principal amount of said Municipal and Consolidated Certificates, heretofore issued and now outstanding, to have stamped thereon a legend of extension that the Receiver pay to the holders thereof 2% of the face amount of said Certificates, in consideration of the consent of the holders to such extension. Of the \$18,000,000 of Municipal and Consolidated Certificates heretofore issued and maturing on February 1, 1922, \$2,000,000 are to be retired, and \$16,000,000 extended for one year. The Commission is asked to approve the extension and also to approve the payment of the 2% commission on the Certificates so extended.

The \$18,000,000 of Municipal and Consolidated Certificates heretofore authorized and now outstanding are held by the Receiver of the Brooklyn Rapid Transit Company as part of the security for the \$18,000,000 of certificates heretofore issued by the Receiver of the Brooklyn Rapid Transit Company. These latter certificates also mature on February 1, 1922, and are practically all held by the group of bankers, or their associates, who originally purchased them.

Two million dollars of the certificates are to be retired and two million dollars of certificates are to be purchased and held by the Receiver. The outstanding certificates are to be extended to February 1, 1923, at the existing rate of 6%, upon payment of 2% commission on the face amount of the certificates so extended, and of the legal expenses incurred in such extension. Of the \$4,000,000 \$2,000,000 are to be retired through the application of funds of the Brooklyn Rapid Transit Company, available for that purpose, and \$2,000,000 are to be retired from funds received from the Receiver

of the Municipal and of the Consolidated. The money for paying off the \$2,000,000 of Municipal and Consolidated Certificates is to be derived from certain impounded funds.

The syndicate holding the Receiver's Certificates initially insisted on an additional four per cent. as the price for the years extension. With the face rate of interest at 6% this would have made the total interest rate for the year 10%. Through the efforts of the court this discount was reduced to three, and finally to two per cent., so that the total interest rate will be approximately 8%. This is coupled with the virtual paying off of \$4,000,000 of certificates.

In view of the losses incurred and sacrifices made by holders of traction securities and employees, and the reduction of this debt by \$4,000,000 and the general decrease in the cost of money, it is the very strong view of the Commission that a one per cent. discount should have been accepted as a maximum to be paid for the extension. The failure of the Commission's efforts to secure such a concession indicated however, the court had already exhausted the possibilities of reducing the syndicate's demands.

The Commission is, therefore, faced with the alternative of approving the extension terms as presented, or of disapproving them and thus subjecting to sale the transit properties covered by the lien of the certificates. Actually there would appear to be no alternative. A sale of these properties and further disintegration of the Brooklyn Rapid Transit system at this time would be a calamity. The existing situation must be preserved pending the working out of the Commission's plans for the readjustment of transit. Therefore, despite its belief that the terms of the extension are excessive, the Commission feels compelled in the public interest to recognize them as the price of keeping the system intact.

The extension is, therefore, approved.

In the Matter of the Application of THE CITY OF NEW YORK for a determination as to the manner in which Palmetto Street and other streets in the Borough of Queens shall cross companies' tracks.

CASE NO. 2564

Grade Crossings—Street Railroad Corporation—Determination as to Distribution of Costs—Sections 90 and 94 of the Railroad Law.—By order, the Public Service Commission, First District, determined that Palmetto Street and fourteen other streets, including Fairview, Putnam and Forest Avenues, should cross the tracks of the Brooklyn City Railroad Company at grade. A plan showing the completion of the work at Fairview, Putnam and Forest Avenues, was by order of the Transit Commission, dated November 1, 1921, approved upon the report of the Commission's engineer. The only question for determination upon the hearing is as to the distribution of cost of construction pursuant to the Railroad Law. As the determination of the Public Service Commission, First District, was made pursuant to Section 90 of the Railroad Law, the distribution of cost is governed by subdivision 2 of Section 94 of the same law; hence the railroad corporation pays one-half of the expense and the city the remaining one-half.

Certificate of Partial Performance of Work and Report and Opinion approved February 21, 1922.

A hearing order in this proceeding upon a final accounting by the Brooklyn City Railroad Company for the construction of the crossings at Putnam, Fairview and Forest Avenues in the Borough of Queens, pursuant to an order of the Commission of June 9, 1921, was adopted January 24, 1922, directing that a hearing take place February 6, 1922. The hearing took place that day, after which, on February 21, 1922, the certificate of partial performance of work and report and opinion below were approved. Further facts appear in the certificate and opinion. (For the order of June 9, 1921, see 1 T. C. R. (N. Y. City) 12.)

CERTIFICATE OF PARTIAL PERFORMANCE OF WORK.

A final order and determination having been made herein on January 12, 1921, by the Public Service Commission for the First District, determining that Palmetto Street and fourteen other streets, including Fairview, Putnam and Forest Avenues, should cross the tracks of The Brooklyn City Railroad Company at grade and providing that the said company should perform the work and be reimbursed by the City for its proportionate share; on June 9, 1921, the Commission adopted a further order modifying the said order of January 12, 1921, so as to provide that Fairview, Putnam and Forest Avenues should be constructed in the first instance and that within ten days after The City of New York had paid to The Brooklyn City Railroad Company its portion of the expense of such crossings, the company should submit to the Commission plans and specifications for certain other crossings; under the supervision and direction of the Commission, the Brooklyn City Railroad Company has constructed and completed the said crossings at Fairview, Putnam and Forest Avenues, and has sub-

mitted to the Commission verified statements and accounts showing the total expenditures by the said company in connection therewith to be \$5,172.92. The City of New York has expended in this connection through the Transit Commission for supervision the sum of \$54.53, making the total expenditure \$5,227.45 and leaving the amount to be paid by The City of New York to The Brooklyn City Railroad Company \$2,559.19, which sum the Commission finds to be correct after hearing duly held on the final accounting herein.

NOW, THEREFORE, the Transit Commission of the State of New York does hereby certify.

FIRST: That an Order determining the manner in which Palmetto Street and fourteen other streets, including Fairview, Putnam and Forest Avenues, should cross the tracks of The Brooklyn City Railroad Company was made by the Commission on January 12, 1921, and modified on June 9, 1921.

SECOND: That the necessary work of establishing such crossings has been performed by The Brooklyn City Railroad Company under the supervision of the Commission, pursuant to said Order of the Commission and that said company has expended in such work \$5,172.92.

THIRD: That The City of New York through the Commission has expended therefor in necessary supervision the sum of \$54.53.

FOURTH: That the balance due to The Brooklyn City Railroad Company from The City of New York is \$2,559.19.

Dated, New York, February 21, 1922.

REPORT AND OPINION

COOKE, ASSISTANT COUNSEL: I, Carleton S. Cooke, authorized and designated to conduct the hearing herein, pursuant to Sections 8 and 11 of the Public Service Commissions Law, do hereby respectfully report as follows:

This proceeding is the proposed final accounting of the Brooklyn City Railroad Company upon the construction of certain crossings at Fairview Avenue, Putnam Avenue and Forest Avenue in the Borough of Queens, City of New York. By final order dated January 12, 1921, the Public Service Commission, First District, determined that Palmetto Street and fourteen other streets, including Fairview, Putnam and Forest Avenues, should cross the tracks of the Brooklyn City Railroad Company at grade. This order is the usual grade crossing determination. Upon application for a rehearing, it was the contention of the Brooklyn City Railroad Company that there was a question as to the jurisdiction of the Public Service Commission to make the order, as it was contended that the road was not a steam railroad; the railroad company, however, offered to perform the work provided that the order be modified so as to give assurance that the company would receive from the City its proportion of the expenses, after the work had been completed. It apprehended that the City might then invoke the alleged lack of jurisdiction of the Commission and plead *ultra vires* to

avoid the payment of its share. Upon an opinion by Commissioner Harkness, the Transit Commission made an order dated June 9, 1921, modifying the final order of January 12, 1921, last mentioned, so as to provide that Fairview, Putnam and Forest Avenues should be constructed and that within ten days after The City of New York had paid to the Brooklyn City Railroad Company its proportion of the expense of such crossings, the company should submit to this Commission plans and specification for certain of the other crossings. It is not necessary to consider in this report the other provisions of such order.

Thereafter the Commission approved the plans and specifications and the proposals for doing the work and such work was thereupon performed by the railroad company. It consisted principally of grading and paving the crossings. A plan showing the completion of the work at Fairview Avenue, Putnam Avenue and Forest Avenue was by order of the Transit Commission dated November 1, 1921 approved upon the report of the Commission's engineer.

Thereafter the Brooklyn City Railroad Company submitted its proposed final accounting and the only question for determination upon this hearing is as to the distribution of the cost of construction pursuant to the Railroad Law. There was placed in evidence before me an affidavit from the General Manager of the Railroad Company which shows that said company became obligated for or expended in construction necessary for the carrying of the crossings of the said three avenues across the railroad, the sum of \$5,172.92. The items composing this total appear on the affidavit in question, being Exhibit No. 10.

In accordance with the practice of the Engineers of the Commission, an engineer was assigned to supervise this work and visited the job daily, keeping records of all items entering into construction. Mr. W. L. Selmer, Civil Engineer of the Commission, called as a witness, produced his report (Exhibit No. 12) which analyzes the expenditures and very closely agrees with the figures of the accounting of the railroad company. In addition thereto, he testified, as indicated in his affidavit (Exhibit No. 11) that the Transit Commission had expended from City funds for supervision of construction the additional sum of \$54.53.

A letter was placed in evidence from the engineer in charge of the Topographical Bureau of the office of the President of the Borough of Queens, City of New York, stating that the matter

had been thoroughly investigated by such office and it was found that the crossings at Fairview, Putnam and Forest Avenues had been completed in accordance with the grades agreed upon by such bureau. From the testimony taken before me, it sufficiently appears that the work of constructing these crossings which consists principally of grading and paving, was completed to the satisfaction of the engineers of the Transit Commission and of the City. No serious dispute was offered by any party and the function of the Transit Commission is merely to apportion the expenses, all of which in my opinion have been shown to be proper and correct.

The determination of the Public Service Commission, First District, was made pursuant to Section 90 of the Railroad Law, and the distribution is governed by subdivision 2 of Section 94 of the same law; hence the railroad corporation pays one-half of the expense and the city the remaining one-half. The distribution of the expense is therefore as follows:

Expenditure by Railroad Company.....	\$5,172.92
Expenditure by City of New York through Transit Commission for supervision.....	54.53
	<hr/>
	\$5,227.45
	<hr/>
One-half to be borne by City.....	\$2,613.72
Paid by City.....	54.53
	<hr/>
Leaving amount to be paid by City to Brooklyn City Railroad Company.....	\$2,559.19
	<hr/>

I recommend that the Commission make its order accordingly, reference being made therein to the orders of January 12, 1921, and June 9, 1921.

In the Matter of the Application of the EIGHTH AVENUE RAILROAD COMPANY for authorization to issue bonds secured by mortgage on two parcels of its real property to the amount of \$1,200,000.

CASE No. 2625

Bonds and Mortgages—Street Railroad Corporation—Application to Issue Real Estate Bonds—Purpose for which Funds to be Obtained are to be Used—Supplemental Petition.—This proceeding originally was for an order by the Commission authorizing the Eighth Avenue Railroad Company to issue its bond or bonds to the amount of approximately \$1,200,000., payable five years from date thereof, bearing interest at 6%, secured by a mortgage or mortgages on two certain parcels of real estate situated at 8th Avenue and 50th Street, for the purpose of obtaining funds wherewith to pay certain existing obligations and to improve certain real property recently acquired. Later the company filed a supplemental petition amending its original application so as to provide for authorization of two several bonds approximating \$1,090,000.

Bonds and Mortgages—Street Railroad Corporation—Transaction Contemplated—No Issues of Securities to be Sold to Public—Transaction Consented to by Board of Directors and Stockholders—How Proceeds of Loan are to be Applied.—The transaction contemplated is the usual real estate mortgage and no issue of securities to be sold to the public is intended. There will be two several bonds for \$300,000 and \$290,000, secured by separate mortgages upon the two parcels. The proposed transaction has been consented to by the Board of Directors and by more than two-thirds in interest of the stockholders as required by law. It is proposed to apply the proceeds of the loan substantially as follows: Commissions and expenses of procuring loan (5%) \$54,400; Purchase money mortgage on property at Eighth Avenue and 155th Street \$275,000; Short term and demand loans due to banks \$525,000; Short term and demand loans due to others \$75,000; on account of arrears of taxes approximately \$175,000.

Bonds and Mortgages—Street Railroad Corporation—Effect of Transaction—Property of Company used for Railroad Purposes to be Free from Encumbrances—Transaction Appears Advantageous to Company—No Opposition upon Hearing.—The effect of this transaction will be to stop the running of interest at 7% upon the arrears of taxes and avoid the danger of tax sales; to relieve the company from the pressure of short term and demand obligations held by banks and individuals; to clear the new property at Eighth Avenue and 155th Street from encumbrances and to provide funds which will assist the company in transferring its car barns from the 50th Street property to the 155th Street property. When this is done the property of the company used for railroad purposes will be wholly free from encumbrances and the company will be in a position to utilize its real estate not needed for railroad purposes to better advantage. Upon the accepted principles of business management, the transaction appears to be advantageous to the company. It was not opposed by any one upon the hearing.

Bonds and Mortgages—Street Railroad Corporation—Section 8, Subdivision 10 of Railroad Law—Issue of Mortgages Must be Consented to by Commission—Section 55 of P. S. C. Law—When Security Issues

are Permitted—Bond Issues—Outstanding Obligations for Income Expenditures May be Refunded by a Bond Issue.—Section 8, Subdivision 10 of the Railroad Law requires that the issue of any mortgage by a railroad company must be consented to by the Public Service Commission, the powers of which in this case are vested in the Transit Commission. Section 55 of the Public Service Commission Law provides that a street railroad Corporation “may issue stock, bonds, notes, or other evidence of indebtedness payable at periods of more than twelve months after the date thereof,” when necessary for certain specified purposes upon obtaining the authorization of the proper Commission. In general, security issues are permitted only for capital expenditures and not for those “reasonably chargeable to operating expenses or to income,” but in the case of bonds, notes or other evidence of indebtedness, the order authorizing the issue may permit the application of the proceeds to the latter class of expenditures. In other words, outstanding obligations for income expenditures, may, under the authorization of the Commission be refunded by a bond issue, but may not be capitalized as the basis of a stock issue.

Bonds and Mortgages—Street Railroad Corporation—Purpose of Statute as Stated by Court of Appeals—Power of Commission to Authorize Issue of Bonds or Notes for Refunding Obligations Incurred for Operating Expenses Sustained—Power should be Carefully Exercised—Legislative Consideration of such Power.—The purpose of this statute has been stated by the Court of Appeals in *People ex rel. D. & H. Co. v. Stevens*, 197 N. Y. 1, to be “the protection and enforcement of the rights of the public.” The power of the Commission to authorize the issue of bonds or notes for the refunding of obligations incurred for operating expenses was sustained. It is obvious that, to prevent inflation and the capitalization of expenditures which should properly be borne out of income, this power should be sparingly and carefully exercised, but the fact that it is granted shows that the Legislature considered that cases might arise in which its exercise would be proper.

Bonds and Mortgages—Street Railroad Corporation—Case under Consideration Presents no Evils which Statute Seeks to Guard Against—Proposed Mortgage not Railroad Mortgage.—Clearing Company's Railroad Properties from Encumbrances will place it in Better Position either for Inclusion in Plan of Readjustment or to Continue Independent Operation—No Reasonable Ground of Objection to Proposed Transaction—Recommendation.—In the case now under consideration, it is manifest that none of the evils against which the statute seeks to guard is even potentially present. The proposed mortgage is not a railroad mortgage as usually understood. The clearing of the company's railroad properties from encumbrances will place the company in a better position for inclusion in any general plan of readjustment which may be adopted by the Commission or on the other hand, will better enable it to continue independent operation if not so included. There appears to be no reasonable ground of objection to the proposed transaction and every consideration both of legal right and of business expediency supports it. Recommended: That the authorization and consent applied for be granted and that the applicant be permitted to make the proposed mortgage or mortgages, secure the proposed loan, and apply the proceeds as above indicated.

Hearings closed December 28, 1921. Order adopted and opinion approved March 7, 1922.

This proceeding came on before the Commission upon receipt of the following petition of the Eighth Avenue Railroad, dated and verified December 1, 1921:

The Eighth Avenue Railroad Company hereby applies to the Transit Commission for an order authorizing it to issue bonds, secured by mortgages on two parcels of its real property, to the amount of \$1,200,000, or thereabouts, to take up and discharge existing temporary bank and demand loans and real estate taxes, the balance for improvements, and respectfully shows:

1. The Eighth Avenue Railroad Company is a street railroad corporation existing under and by virtue of the Laws of the State of New York, and was incorporated in 1855, the Articles of Association of said corporation being filed in the office of the Secretary of State, January 10, 1855. A copy of said Articles of Association, together with the various Resolutions of the Common Council and laws of the State of New York relative thereto, were heretofore and on or about September 23, 1907, duly filed with the Commission.

2. That the capital stock of this Company was originally \$800,000, and was thereafter and in 1863 duly increased to \$1,000,000; that all of said stock, consisting of 10,000 shares of the par value of \$100 each, is issued and outstanding, and that there is no preferred stock.

3. That this Company has no mortgage or bonded indebtedness of any kind, except two purchase money mortgages aggregating \$300,000, on two parcels of real estate recently purchased by it for railroad purposes. The Company also has outstanding certain Certificates of Indebtedness payable February 1, 1929, with option of earlier payment amounting to \$611,200, of an authorized issue of \$750,000, such authorization being by order of the Public Service Commission for the First District, dated October 8, 1918, in Case No. 2321. None of its capital stock has been issued or used in capitalizing any franchise, or the right to own, operate or enjoy any franchise, or any contract for consolidation or lease.

4. That this Company from July 1, 1916, to October 15, 1918, on its capital stock of One Million Dollars, declared and paid quarterly dividends of 4% (amounting to \$40,000), and since October 15, 1918, has not paid any dividends, making the total amount of dividends paid during the past five years \$400,000. The amount of interest paid by this Company during the fiscal year ending June 30, 1921, was \$71,574.30, and the prevailing rate thereof was six per cent, a few loans bearing a higher rate of interest. A detailed statement of earnings and expenditures for and balance sheet showing conditions at the close of last fiscal year has heretofore been filed with the Commission.

Schedule "A" hereto annexed and made part hereof contains a statement showing the financial condition of this Company, and a description of its road, plant, or system and equipment, and of the cost or value of existing property, and of the amount of any of its stock held by other corporations.

5. That for many years prior to August 1, 1919, the railroad and other property of this Company was in possession of the New York Railways Company under lease made November 23, 1895, by this Company to the Metropolitan Street Railway Company. That pursuant to order of United States District Court, dated July 15, 1919, the Receiver of New York Railways Company was directed not to adopt said lease, but to return the railroad and other property to this Company on August 1, 1919, but reserving certain questions for future determination. That since August 1, 1919, this Company has operated, and now is operating its railroad property. This Company has found it necessary to expend considerable money in the rehabilitation and continued operation of its road under adverse conditions, and in providing

machinery, tools, supplies, and other real property better adapted for railroad use, all of which are required to put the railroad on a sound economical operating basis. In addition thereto the snow storm of February, 1920, cost a large loss to the Company. A large proportion of the real property purchased many years ago for railroad use, for many years had not been used for railroad purposes, and has become more valuable for other purposes, and the Company has acquired several new parcels better adapted to its use at much less value, all of which will tend very largely toward increasing income and efficiency, and reducing the expense of operation. To provide money for such purposes the Company has been compelled to obtain temporary bank and demand loans, and the lenders are pressing for payment. On July 13, 1921, a special meeting of the stockholders, duly called, was held for the purpose of considering the financial condition of the Company, and the payment or refunding of its outstanding obligations, and to provide for future needs by the sale of part of its real property, the issuance of bonds secured by mortgage on its property and franchises in whole or in part, and such meeting has been duly adjourned from time to time until December 6, 1921. The Directors have been meeting from time to time to consider the financial condition of the Company and its future needs, and they are of opinion that at the present time, it will be greatly to the advantage of the Company not to attempt to mortgage its railroad or franchises, but to borrow the sum of \$1,200,000, on the bond or bonds of the Company, secured by mortgage or mortgages on two of its parcels of real estate, to wit, the plot on the west side of 8th Avenue, between 49th and 50th Streets, extending back 475 ft. on 49th Street and 450 ft. on 50th Street, and the plot at southeast corner of Eighth Avenue and 50th Street, extending 150 ft. 5 in. on Eighth Avenue, 100 ft. deep, and a lot on 50th Street adjoining, 25 feet front by 100 ft. 5 in. deep. That the officers of the Company have been authorized to make this application by the Directors and the Stockholders, and the President and Treasurer of the Company now hold proxies aggregating more than two-thirds of the capital stock, and formal resolutions of the Board of Directors and the Stockholders authorizing this application, and consenting to the issuance of said bonds and mortgages, will be submitted to this Commission on the hearing. This Company is now the owner of seven parcels of real property, the value of which at conservative estimate exceeds \$2,500,000. In addition to said real property the railroad and other property in the streets owned by the Company, were appraised by the firm of Stone & Webster in their report to the Receiver of New York Railways Company, on basis of cost to reproduce at pre-war prices, and less depreciation, at over \$4,000,000. In addition thereto the Company owns machinery, rolling stock, materials and supplies, of large value. The approximate amount of the temporary and demand loans pressing for payment is \$875,000. The approximate amount of real estate taxes now due and payable is approximately \$175,000.00, and the commissions and expense of procuring loan on real property will be about five per cent, and the Company is in need of money for improvements to the real property recently acquired at 8th Avenue and 155th Street.

6. Your petitioner now desires to issue its bond or bonds to the amount of \$1,200,000, or thereabouts, to bear interest at the rate of six per cent per annum from date thereof, payable semi-annually, to secure said bonds by mortgages on its two parcels of real estate at 50th Street and 8th Avenue, said bonds and mortgages to be payable five years from date thereof, and upon such

further terms as to right of prior payment and other details as may be agreed, the proceeds of such bonds to be used to pay off and satisfy temporary bank and demand loans (including present mortgage on plot at 8th Avenue and 155th Street amounting to \$275,000), to pay real estate taxes on its real property amounting to about \$175,000, expenses in connection with the loan, and the balance to be used for improvements to the property at 8th Avenue and 155th Street.

7. The full name and address of this Company is: Eighth Avenue Railroad Company, 1 Madison Avenue, New York City; name and address of its Counsel is: Michel Kirtland, 2 Wall Street, New York City.

WHEREFORE, the Eighth Avenue Railroad Company respectfully makes application to the Commission, pursuant to Section 55 of the Public Service Commission Law, for an order authorizing it to issue its bond or bonds to the amount of \$1,200,000, or thereabouts, payable five years from date thereof, at six per cent interest, secured by a mortgage or mortgages on its two parcels of real estate at 8th Avenue and 50th Street as aforesaid, for the purpose of paying, retiring and discharging existing temporary bank and demand loans, mortgage on plot at 8th Avenue and 155th Street, real estate taxes now due on its real property, the balance of the sum procured to be used for improving said real property at 8th Avenue and 155th Street.

SCHEDULE "A"

The railroad property of the Eighth Avenue Railroad Company consists of a street railroad operated by underground current of electricity, together with the necessary lands, plants, machinery and other equipment, the route or routes of which are substantially as follows:

Commencing at or near the intersection of Vesey Street and Broadway, it runs through Vesey Street to College Place, through College Place, Church Street and Chambers Street to West Broadway, through West Broadway to Canal Street, through Canal Street to Hudson Street and through Hudson Street to the Eighth Avenue, through and along the Eighth Avenue to the Harlem River and from the intersection of McComb's Dam Road with Eighth Avenue along McComb's Dam Road to or near the westerly end of McComb's Dam Bridge, with an extension of branch running from the junction of West Broadway and Canal Street to Broadway.

A portion of said route being owned in common by the Eighth Avenue Railroad Company and the Sixth Avenue Railroad Company and a portion subject to the right of user by the Broadway and Seventh Avenue Railroad Company.

Prior to August 1, 1919, and while said railroad property was in possession of lessee, some changes were made in the tracks at southerly end of route as above described. Since August 1, 1919, the railroad has been operated on tracks as they now exist, and litigation is pending in relation to changed tracks, cars and other matters, and the stating of the account between this company and the New York Railways Company and its Receiver.

In addition to real property shown on balance sheet the company has since acquired at a cost of nearly \$500,000, the entire block (excluding small plot on Eighth Avenue) between 155th and 156th Streets, extending from Eighth Avenue east to the Harlem River, with water frontage and riparian rights, containing about

137,000 square feet, on which plot the Company will have ample room for the storage of its cars, machine shop, repair shop, power station, and all other mechanical activities, and thus release its more valuable real property at Eighth Avenue and 50th Street for increased rentals pending sale, and increase its sale price.

The Company has also acquired since resuming operation, two parcels of real property one on Hudson Street extending through to Renwick Street, near Canal Street, and one on Canal Street, at a cost exceeding \$68,000, which it intends to use for railroad purposes. On Hudson Street plot there is a purchase money mortgage of \$25,000, maturing in March, 1923. On the parcel recently acquired at Eighth Avenue and 155th Street there is a purchase money mortgage of \$275,000, maturing February 28, 1922, which is to be paid from the proceeds of mortgages, for which authority to issue is now sought in this proceeding.

That none of the stock of the Eighth Avenue Railroad Company is held by other stock corporations; several of the holders, however, are Trust Companies, holding or having title as Executor or Trustee of the Estate of a deceased person.

The Company owns the following parcels of real estate:

- (1) Plot west side 8th Avenue, 49th to 50th Streets, extending back 475 ft. on 49th Street. and 450 ft. on 50th Street.
- (2) Plot southeast corner 8th Avenue and 50th Street 150 ft. 5 in. on Avenue, 125 ft. on Street.
- (3) Lot 350 W. 50th Street 25 ft. x 100 ft. 5 in.
- (4) Lot 64 Vesey Street undivided one-half interest 25 ft. 2 in. x 100 ft.
- (5) Plot west side Hudson Street Nos. 231-237, 50 x 80 ft., but extending through to Renwick Street, Nos. 6 and 8, 33 ft. 4 in. x 70 ft.
- (6) Lot 493 Canal Street, 16 ft. 11 in. x about 32 ft.
- (7) Plot 8th Avenue extending east to Harlem River between 155th and 156th Streets (except lot 50 x 100 ft. on 8th Avenue,

Note: Plot 7 acquired November 1, 1921.

BALANCE SHEET FOR FISCAL YEAR ENDING JUNE 30, 1921.

ASSETS:

Cash	\$10,383.43
Special Deposits	86.00
Accounts Receivable	24,162.29
Interest and Disc. Receivable	4,345.81
Securities	67,783.75
B. & M. on real property sold	180,000.00
Materials and Supplies	54,603.67
Real Estate bought prior 1919	1,791,205.00
Real Estate bought since 1919	68,834.80
Construction (Tracks in Street)	4,121,647.00
Equipment	342,394.42
Construction and Equipment (new)	93,996.85
Prepayments	1,387.23
	<hr/>
	\$6,760,830.25
Deferred Debits (see contra)	
New York Rys. Co. }	
Recr. New York Rys. Co. }	698,271.07
Coogan property, account of	20,831.83
	<hr/>
	\$7,479,933.15

LIABILITIES:

Certificates of Indebtedness Outstanding	\$611,200.00
Interest accrued on funded debt.....	19,123.53
Interest accrued on unfunded debt	3,490.74
Bills Payable	425,000.00
Accounts Payable	94,383.03
Taxes Accrued	211,490.48
B. & M. on real estate purchased	25,000.00
Special Deposit	4,250.00
	<hr/>
	\$1,393,937.78
Deferred Credits (See contra)	
New York Rys. Co. }	646,351.04
Recr. New York Rys. Co. }	
Capital Stock	1,000,000.00
Surplus	4,439,644.33
	<hr/>
	\$7,479,933.15

Note:—

- Item "Real Estate," for parcels see preceding page.
- Item "Construction (Tracks in Street)" based on valuation of Stone & Webster as of June 30, 1919, at pre-war prices, less depreciation, excluding organizational expenses prior to construction.
- Item "Deferred Debits" and "Deferred Credits," accounts by and against New York Rys. Co. and Receiver subject to adjustment and pending litigation.
- Item "Taxes Accrued" excludes amounts due payable by New York Rys. Co. and Receiver.

Value of franchise not included in above statement.

On December 6, 1921, the Commission adopted an Order directing that a hearing be had upon the above petition on December 19, 1921. The hearing was held that day and later another hearing was held on December 28, 1921, on which latter date the hearings were closed.

Following the closing of the hearings in this case, the Eighth Avenue Railroad Company, filed with the Commission, a supplemental petition dated and verified February 10, 1922, as follows:

The Eighth Avenue Railroad Company hereby supplements its petition verified December 1, 1921, in above entitled proceeding for an order authorizing it to issue its two bonds, each secured by a mortgage on a parcel of its real property, and respectfully shows:

- (1) That at the time of the hearing held December 28, 1921, the negotiations which had theretofore been pending by the Company to secure two loans, one for the sum of \$900,000, to be secured by mortgage on one of its parcels of real property located on the west side of Eighth Avenue between 49th and 50th Streets, extending back 475 ft. on 49th Street and 450 ft. on 50th Street, and the other for the sum of \$300,000, secured by mortgage on its parcel of real property situate at southeast corner of Eighth Avenue and 50th Street, extending 150 ft. 5 in. on Eighth Avenue, 100 ft. deep, and a lot on 50th Street, adjoining 25 ft. front by 100 ft. 5 in. deep.

(2) Your petitioner further says that it was unable to secure loans in the amounts named, but it has procured an acceptance from The Farmers' Loan & Trust Company, a corporation having its principal place of business at No. 22 William Street, New York City, of a loan of \$800,000, on bond of petitioner payable five years from date thereof, with interest at the rate of six per centum per annum, secured by a mortgage on that parcel of real property of petitioner situate on west side of Eighth Avenue, between 49th and 50th Streets, above referred to, the proposed mortgagee requiring \$50,000, of said sum to be expended on alterations and improvements to the buildings on the plot, and amortization of the principal at the rate of one per cent semi-annually, beginning eighteen months from date of mortgage; and your petitioner has procured an acceptance from The Domestic & Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, a corporation having its principal place of business at No. 281 Fourth Avenue, New York City, of loan of \$290,000, on bond of petitioner payable five years from date thereof, with interest at the rate of six per centum per annum, secured by mortgage on that parcel of real property of petitioner situate at southeast corner of Eighth Avenue and 50th Street above referred to, and the proposed mortgagee may require a small amortization of the principal; that each of said proposed loans has been accepted by your petitioner, and negotiations upon closing may result in some slight modification in conditions other than amount and interest rate.

WHEREFORE, the Eighth Avenue Railroad Company respectfully asks leave to amend its petition verified December 1, 1921, accordingly, and that an order be granted authorizing it to issue its two several bonds each secured by mortgage on one of its parcels of real estate as aforesaid for the purposes indicated in its petition.

The Commission by order adopted February 14, 1922, granted the Eighth Avenue Company its application to amend its original petition as indicated in its supplemental petition. The order and report and opinion set forth below were thereafter adopted and approved respectively. Further facts as to this case are found therein.

ORDER CONSENTING TO MORTGAGE, AND AUTHORIZING ISSUE OF BONDS.

Section 1. Application having been made to the Transit Commission by the Eighth Avenue Railroad Company by petition dated and verified December 1, 1921, and by supplemental petition dated and verified February 10, 1922, under the provisions of the Railroad Law, for the consent of the Commission to the execution and issuance by said company of a mortgage to the Farmers' Loan and Trust Company, and to the execution and issuance by said company of a mortgage to The Domestic & Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, and a hearing having been duly held upon said application; and it appearing to the Commission that the owners of capital stock of said Eighth Avenue Railroad Company to an amount equal to that required by the statute have consented to the issuance of said mortgages.

Section 2. It IS ORDERED that the Transit Commission, does as

hereinafter provided, hereby consent to the execution and issuance by said Eighth Avenue Railroad Company of two certain mortgages described as follows:

(1) A mortgage by said Eighth Avenue Railroad Company unto the Farmers' Loan and Trust Company, on the parcel of real property of the Eighth Avenue Railroad Company, situate on the west side of Eighth Avenue, between 49th Street and 50th Street, in the Borough of Manhattan, City and State of New York, to secure a loan of \$800,000 on bond of the Eighth Avenue Railroad Company, payable five years from the date thereof, with interest at the rate of six per centum per annum, the said mortgage requiring \$50,000 of said sum to be expended on alterations and improvements to the buildings on the plot, and amortization of the principal at the rate of one per cent semi-annually, beginning eighteen months from the date of the mortgage.

(2) A mortgage by said Eighth Avenue Railroad Company unto The Domestic & Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, on the parcel of real property of the Eighth Avenue Railroad Company, situate at the southeast corner of Eighth Avenue and 50th Street, in the Borough of Manhattan, City and State of New York, to secure a loan of \$290,000 on bond of the Eighth Avenue Railroad Company, payable five years from the date thereof, with interest at the rate of six per centum per annum.

PROVIDED, HOWEVER, that the said Eighth Avenue Railroad Company shall hereafter submit to the Commission the mortgages for approval as to form, and that the said Commission shall approve the said mortgages as to form. Said company, however, shall have no right or authority to issue any bonds pursuant to the terms of said mortgages, or either of them, except as herein or hereafter authorized by the Commission.

Section 3. Application having been also made to the Transit Commission by said Eighth Avenue Railroad Company by its said petitions under the provisions of the Public Service Commission Law for an order of the Commission authorizing the issue by said company of its two several bonds, each payable five years from date thereof with interest at the rate of six per centum per annum one for the sum of \$800,000, secured by mortgage on that parcel of real property of said company, situate on the west side of Eighth Avenue, between 49th and 50th Streets hereinbefore referred to, and one for the sum of \$290,000 secured by mortgage on that parcel of real property of said company, situate at the southeast corner of Eighth Avenue and 50th Street hereinbefore referred to; and a hearing having been duly held upon said application, and it now being the opinion of the Commission:

(1) That the money to be procured by the issue of said bonds, namely \$1,090,000 is necessary to and reasonably required by said company for the improvement of its facilities or for the discharge or refunding of its obligations and particularly for the purposes which are hereinafter stated in this order; and

(2) That the said company should be permitted to expend the said money for the purposes hereinafter stated.

Section 4. It Is ORDERED that the Transit Commission does hereby authorize the issue by said Eighth Avenue Railroad Company of its bond of Eight Hundred Thousand Dollars (\$800,000) payable five years from the date thereof, with interest at the rate of six per centum per annum, secured by the mortgage to the Farmers' Loan and Trust Company, hereinbefore described, and of its bond of Two Hundred Ninety Thousand Dollars (\$290,000), secured by the mortgage to The Domestic & Foreign Missionary Society of the Protestant Episcopal Church in

the United States of America, hereinbefore described.

Section 5. It Is ORDERED that the issue of said bonds of the Eighth Avenue Company is authorized upon the conditions following and not otherwise, to wit:

First: That the said Eighth Avenue Railroad Company shall apply the proceeds of said issue to the amount of One Million Ninety Thousand Dollars (\$1,090,000) to the following purposes:

1. To alterations and improvements to the buildings on the premises of the company covered by the said mortgage to the Farmers' Loan and Trust company, as required by the term of said mortgage \$50,000.00
2. To the payment of commissions and expenses of procuring said loans 54,500.00
3. To the payment of the purchase money mortgage on the property of the company at Eighth Avenue and 155th Street 275,000.00
4. To the payment of short term and demand loans due to banks 525,000.00
5. To the payment of short term and demand loans due to others 75,000.00
6. To the payment of arrears of taxes 175,000.00

Second: That the said company shall keep separate, true and accurate accounts of the receipt and application in detail of the proceeds of the bonds hereby authorized to be issued; and on or before the 10th day of each month, the company shall make verified reports to the Commission stating the issue of said bonds, the moneys received therefrom and the use and application of such moneys; and said accounts, vouchers and records shall be open to audit and may be audited from time to time by accountants and examiners designated for such purpose by the Commission.

Third: That the authority hereby given to issue said bonds shall apply only to bonds issued by the said company on or before the thirtieth day of April, 1922.

Section 6. That a duplicate original of the bonds and mortgages authorized and consented to as aforesaid upon execution thereof be filed by the said Eighth Avenue Railroad Company with the Secretary of the Commission.

Section 7. IT IS FURTHER ORDERED that this order take effect immediately, subject to the proviso contained in Section 2, and except as provided in subdivision Third of Section 5, limiting the duration of the authority to issue such bonds herein granted, continue in force until otherwise ordered by the Commission, and that within ten days after service upon it of a copy of this order, said company notify the Commission whether, the terms of this order are accepted and will be obeyed.

OPINION

KINGSBURY, *Counsel*; I, Howard Thayer Kingsbury, Counsel to the Transit Commission, authorized and designated by order and certificate of this Commission dated December 6, 1921, to conduct and hold the hearing of this case and to take testimony in respect thereto, and report the same to the Commission with my opinion thereon for the determination and decision of the Commission, hereby respectfully report as follows:

This proceeding was instituted by the presentation to the Transit Commission of a petition dated December 1, 1921, by the Eighth Avenue Railroad Company for an order by the Commission authorizing said Eighth Avenue Railroad Company to issue its bond or bonds to the amount of approximately \$1,200,000, payable five years from the date thereof, bearing interest at 6%, secured by a mortgage or mortgages on two certain parcels of real estate belonging to said Eighth Avenue Railroad Company situated at Eighth Avenue and 50th Street, for the purpose of obtaining funds wherewith to pay certain existing obligations of said railroad company and to improve certain real property recently acquired by said company, situated at Eighth Avenue and 155th Street. By order dated December 6, 1921, the Commission directed that a hearing on said application be held on December 19, 1921, and ordered and certified that the undersigned be authorized and designated to conduct said hearing as aforesaid.

Pursuant to such order, I conducted and held said hearing on December 19 and December 28, 1921. The hearing was closed on the date last mentioned. Upon the hearing, Michel Kirtland, Esq., appeared on behalf of the Eighth Avenue Railroad Company, and Hon. John P. O'Brien, Corporation Counsel, by Herbert S. Werthley, Esq., Assistant Corporation Counsel, on behalf of The City of New York, and George H. Stover, Esq., Assistant Counsel to the Transit Commission, attended on behalf of the Commission. The testimony taken upon the hearing and the exhibits received in evidence thereon are all returned herewith.

After the hearing had been closed, the petitioner, finding that it was unable to secure loans to the amount of \$1,200,000, filed a supplemental petition dated February 10, 1922, praying that its application be amended and that an order be granted authorizing it to issue its two several bonds, each payable five years from the date thereof, with interest at the rate of six percentum per annum, one for \$800,000, secured by mortgage on its parcel of real property located on the west side of Eighth Avenue between 49th and 59th Streets, extending back 475 feet on 49th Street and 450 feet on 50th Street, and one for \$290,000, secured by mortgage on its parcel of real property situate at the southeast corner of Eighth Avenue and 50th Street, extending 150

feet 5 inches on Eighth Avenue, 100 feet deep, and a lot on 50th Street adjoining 25 feet front by 100 feet 5 inches deep. Under the terms of the proposed mortgage on the first plot, the petitioner is required to expend the sum of \$50,000 on alterations and improvements to the buildings thereon. By order of the Commission, dated February 14, 1922, the petitioner was permitted to amend its application as hereinbefore set forth and the petition as so amended was referred to me.

The applicant is a street railroad corporation which was incorporated under the laws of the State of New York by the filing of Articles of association in the office of the Secretary of State on January 10, 1855. It operates a street railroad on a route commencing at the intersection of Vesey Street and Broadway, through Vesey Street, College Place, Church Street, Chambers Street, West Broadway, Canal Street, Hudson Street, Eighth Avenue and McComb's Dam Road to or near the westerly end of McComb's Dam Bridge, with an extension from the junction of West Broadway and Canal Street to Broadway. A portion of the route is owned in common by the Eighth Avenue Railroad Company and the Sixth Avenue Railroad Company and a portion is subject to a right of user by the Seventh Avenue Railroad Company. The capital stock of the company is in the sum of \$1,000,000, consisting of 10,000 shares of the par value of \$100 each, all issued and outstanding. The stock is all of one class, without preferences. The company has no mortgage or bonded indebtedness except two purchase money mortgages aggregating \$300,000 two parcels of real estate, situated at Eighth Avenue and 155th Street and at Nos. 231-237 Hudson Street, respectively, recently purchased by the company for railroad purposes. None of the capital stock has been issued for the purpose of capitalizing any franchise or franchise rights or for any lease or contract for consolidation.

The company has outstanding certain certificates of indebtedness due February 1, 1929, with option of earlier payments, amounting to \$611,200 out of a total issue of \$750,000 authorized by order of the Public Service Commission, First District, dated October 8, 1918, made in Case No. 2321.

The railroad of the applicant was leased by it on November 23, 1895, to the Metropolitan Street Railway Company, afterwards succeeded in interest by the New York Railways Com-

pany, for which a Receiver was subsequently appointed. By order of the United States District Court for the Southern District of New York dated July 15, 1919, such Receiver was directed not to adopt the lease, but to return the railroad to the company on August 1, 1919. Certain questions were reserved for future determination and adjustment. The railroad was returned as directed and since August 1, 1919, the applicant has operated it and is now operating it. Upon thus regaining possession of its railroad, the company found it necessary to expend considerable money in the rehabilitation and continued operation of the road. Various parcels of the real property owned by the company have become too valuable to be devoted to railroad purposes and the company has acquired other property better adapted to such use and representing a smaller investment. To provide money for these purposes, the company has been compelled to obtain short term loans from banks and from individuals.

The balance sheet of the company as of June 30, 1921, as proven in this proceeding is as follows:

Assets:

Cash	\$10,383.43
Special Deposits	86.00
Accounts Receivable	24,162.29
Int. & Disc. Receivable	4,345.81
Securities	67,783.75
B. & M. on real property sold	180,000.00
Materials & Supplies	54,603.67
Real Estate bought prior 1919	1,791,205.00
Real Estate bought since	68,834.80
Construction (Tracks in Street)	4,121,647.00
Equipment	342,394.42
Construction & Equipment (new)	93,996.85
Prepayments	1,387.23
	<hr/>
	\$6,760,830.25
Deferred Debits (see contra)	
New York Rys. Co. }	
Recr. New York Rys. Co. }	698,271.07
Coogan property, account of	20,831.83
	<hr/>
	\$7,479,933.15

Liabilities:

Certificates of Indebtedness Outstanding, 611,200.00	
Interest accrued on funded debt	19,123.53
Interest accrued on unfunded debt	3,490.74
Bills Payable	425,000.00
Accounts Payable	94,383.03
Taxes Accrued	211,490.48
B. & M. on real estate purchased	25,000.00
Special Deposit	4,250.00
	<hr/>
	\$1,393,937.78
Deferred Credits (See contra)	
New York Rys. Co. }	
Recr. New York Rys. Co. }	666,361.04
Capital Stock	1,000,000.00
Surplus	4,439,644.33
	<hr/>
	\$7,479,933.15

Since June 30, 1921, the company has taken title to the 155th Street property and has obtained loans for the money to pay for it, amounting to \$450,000.

The company owns two parcels of land on Eighth Avenue, one on the west side thereof between 49th and 50th Streets, extending westwardly 475 feet on 49th Street and 450 feet on 50th Street, the other at the southeast corner of Eighth Avenue and 50th Street, extending 150 feet five inches on Eighth Avenue, by 100 feet in depth, with an adjoining lot on 50th Street, 25 feet in width by 100 feet five inches in depth. The first mentioned of these two parcels is used in part as a car barn and also for other purposes. The parcel at the southeast corner of Eighth Avenue and 50th Street is leased to a single tenant at \$21,000 per year. The rents received from the property on the west side of Eighth Avenue amount to \$51,000 per year.

On or about November 1, 1921, the Company acquired the block on Eighth Avenue, running east to the Harlem River between 155th and 156th Streets, except a small lot 50 by 100 on Eighth Avenue. It is now using this land for railroad purposes and it proposes to improve it by the erection of a car barn thereon. When this work has sufficiently progressed, it will be

possible for the company to discontinue the use of the property at Eighth Avenue and 50th Street for railroad purposes and to apply it to other and more profitable uses.

The company desires to obtain a five year loan in the amount of \$1,090,000, with interest at the rate of 6% per annum and to secure the same by mortgages on the two parcels of land at 50th Street and Eighth Avenue above mentioned. The transaction contemplated is the usual real estate mortgage and no issue of securities to be sold to the public is intended. There will be two separate bonds for \$800,000 and \$290,000 respectively, secured by separate mortgages upon the two parcels.

The proposed transaction has been consented to by the Board of Directors and by more than two-thirds in interest of the stockholders, as required by law.

It is proposed to apply the proceeds of the loan substantially as follows:

Commissions and expenses of procuring loan (5%)	\$54,500
Purchase money mortgage on property at Eighth Avenue and 155th Street	275,000
Short term and demand loans due to banks	525,000
Short term and demand loans due to others	75,000
On account of arrears of taxes approximately	175,000

The effect of this transaction will be to stop the running of interest at 7% upon the arrears of taxes and avoid the danger of tax sales; to relieve the company from the pressure of short term and demand obligations held by banks and individuals; to clear the new property at Eighth Avenue and 155th Street from encumbrances and to provide funds which will assist the company in transferring its car barns from the 50th Street property to the 155th Street property. When this is done the property of the company used for railroad purposes will be wholly free from encumbrances and the company will be in a position to utilize its real estate not needed for railroad purposes to better advantage. Upon the accepted principles of business management, the transaction appears to be advantageous to the company. It was not opposed by any one upon the hearing.

The Railroad Law requires in Section 8 subdivision 10 that the issue of any mortgage by a railroad company must be consented to by the Public Service Commission, the powers of

which are in this case vested in the Transit Commission. The Public Service Commission Law provides in Section 55 that a street railroad corporation "may issue stocks, bonds, notes or other evidence of indebtedness, payable at periods of more than twelve months after the date thereof," when necessary for certain specified purposes, upon obtaining the authorization of the proper commission. The purposes specified include the acquisition of property, the construction, completion, extension or improvement of facilities, the improvement or maintenance of service and the discharge or refunding of obligations and the reimbursement of moneys actually expended from income within five years next prior to the application. In general, security issues are permitted only for capital expenditures and not for those "reasonably chargeable to operating expenses or to income," but in the case of bonds, notes or other evidence of indebtedness, the order authorizing the issue may permit the application of the proceeds to the latter class of expenditures. In other words, outstanding obligations for income expenditures may, under the authorizations of the Commission, be refunded by a bond issue, but may not be capitalized as the basis of a stock issue.

The purpose of this statute has been stated by the Court of Appeals in *People ex rel. D. & H. Co. v. Stevens*, 197 N. Y. 1 to be "the protection and enforcement of the rights of the public." The Court further said:

"For a generation or more the public has been frequently imposed upon by the issues of stocks and bonds of public service corporations for improper purposes, without actual consideration therefor, by company officers seeking to enrich themselves at the expense of innocent and confiding investors. One of the legislative purposes in the enactment of this statute was to correct this evil by enabling the commission to prevent the issue of such stock and bonds, if upon an investigation of the facts it is found that they were not for the purposes of the corporation enumerated by the statute and reasonably required therefor.

"We do not think the legislation alluded to was designed to make the commissioners the financial managers of the corporation, or that it empowered them to substitute their judgment for that of the board of directors or stockholders of the corporation as to the wisdom of a transaction, but that it was designed to make the commissioners the guardians of the public by enabling them to prevent the issue of stock and bonds for other than the statutory purposes;

these purposes we have already enumerated in quoting the statute, the last being for the discharge or lawful refunding of its obligation."

The power of the commission to authorize the issue of bonds or notes for the refunding of obligations incurred for operating expenses was sustained. It is obvious that, to prevent inflation and the capitalization of expenditures which should properly be borne out of income, this power should be sparingly and carefully exercised, but the fact that it is granted shows that the legislature considered that cases might arise in which its exercise would be proper.

In the case now under consideration, it is manifest that none of the evils against which the statute seeks to guard is even potentially present. The proposed mortgage is not a railroad mortgage, as usually understood. It will not constitute an encumbrance upon any of the railroad properties of the company except for such period as may elapse before the 155th Street property can be improved for car barn purposes. Without going into any elaborate examination of the company's financial condition, it is evident that it is solvent and that its assets substantially exceed its liabilities. While it now appears to be operating at a loss, the testimony indicates that conditions are improving in this regard and that the proposed readjustment of its affairs will enable it to effect further economies and secure more income from its non-railroad properties.

The clearing of the company's railroad properties from encumbrances will place the company in a better position for inclusion in any general plan of readjustment which may be adopted by the Commission or, on the other hand, will better enable it to continue independent operation, if not so included. There appears to be no reasonable ground of objection to the proposed transaction and every consideration both of legal right and of business expediency supports it.

For these reasons it is my opinion that the authorization and consent applied for should be granted and that the applicant should be permitted to make the proposed mortgage or mortgages, secure the proposed loan, and apply the proceeds as above indicated.

All of which is respectfully submitted this 15th day of February, 1922.

In the Matter of the Hearing on motion of the Commission as to REPAIRS, IMPROVEMENTS, CHANGES or ADDITIONS to the street surface railroad track at 65th Street and Broadway and 71st Street and Broadway and between hose points in the Borough of Manhattan.

CASE NO. 2626

Tracks—Street Railroad Corporations—Investigation as to Condition of Tracks—Proceeding instituted by Commission—Two Matters for Determination at Hearing.—This proceeding was instituted by the Commission on its own motion to inquire as to the condition of the street surface railroad tracks at 65th Street and Broadway and 71st Street and Broadway and between these points in the Borough of Manhattan, City of New York, and as to the necessity for repairs, improvements, changes or additions thereto. The hearing was ordered first to enable the Commission to determine the nature and extent and location of such repairs, etc., and second to enable it to determine whether such repairs, etc., required joint action of two or more corporations.

Tracks—Street Railroad Corporations—Location of Tracks—Operating Companies Concerned—Routes of Companies—Intersection of Tracks Necessitates Special Work.—The track in question lies on Broadway between 64th Street and 72nd Street. It is operated over by The Ninth Avenue Railroad Company and by The Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company which is part of the Third Avenue system. The Ninth Avenue line comes up Columbus Avenue, enters Broadway just below 65th Street, continues up Broadway and then runs north into Amsterdam Avenue just above 71st Street. The route of the Forty-second Street Company in this vicinity is entirely on Broadway, north of 71st Street and south of 65th Street, as well as between those two streets. The fact that the tracks of the two companies intersect near 65th Street and near 71st Street necessitates certain special work, and it is this special work which requires repair and especially the special work near 71st Street.

Tracks—Street Railroad Corporations—Question as to Necessity for Repairs—Both Companies Concede Repairs Necessary—Particular Matter in Dispute—Matter of Proportion of Expense to be Borne by Companies.—No question is raised as to the necessity for repairs. One of the Commission's Assistant Electrical Engineers, testified that repairs of a radical nature were required for the special work at 71st Street and both companies conceded that the repairs which he recommended were necessary. The particular matter in dispute is as to which company shall make the repairs or as to what proportion of the expense shall be borne by each.

Tracks—Street Railroad Corporations—Claims as to Ownership of Tracks—42nd Street Company Willing to Perform Work,—9th Avenue Company's Contention—Questions of Title Judicial in Nature and now Before Courts—Not Necessary for Commission to Pass Upon Claim of Titles to Tracks.—The 42nd Street Company claims that it is joint owner of the tracks between 65th Street and 71st Street. The Ninth Avenue Company claims that it is the sole owner and that the 42nd Street Company is merely a tenant at will. The 42nd Street Company is willing to perform the work provided that the Ninth Avenue Company will make an agreement and furnish security for paying one-half

the cost. The Ninth Avenue Company contends that the entire cost must be borne by the 42nd Street Company. The two companies are not in disagreement as to the facts upon which they base their respective claims of ownership, but merely as to the legal conclusions which they draw from these facts. These questions are now before the courts and are judicial in their nature. As such they must be determined by the courts and not by this Commission. With respect to the section of the law under which the Commission is proceeding, it is the view that it is unnecessary for the Commission to pass upon the claims of the companies as to titles to the track in question.

Tracks—Street Railroad Corporations—Section 50 of P. S. C. Law — Joint Action as Distinguished from Joint Liability—Where Work May be Performed by One Company, Commission Not Required to Fix Proportion of Cost which Another Company May be Required to Pay —Legislative Intention—Primary Function of Commission.—Section 50 of the Public Service Commission Law requires the Commission to give the companies an opportunity to agree upon the part or division of cost of the work which each shall bear or, upon their failure to agree, to fix the proportion itself; but this is only where the improvements "require joint action by two or more of said corporations." The section says "joint action" and does not refer to joint liability for the cost. This seems to indicate that where the work may be performed by one company the Commission is not required to fix the proportion of cost which another company may be required to pay by reason of contract or other obligations. Whether another company may not have assumed or be otherwise required to contribute to the expense of an improvement which one company is required to make is a judicial question for the courts and, it is the opinion, the Legislature did not intend to impose upon the Commission the duty of passing upon such questions before ordering improvements which it determines to be necessary as a matter of fact. The primary function of the Commission is to determine as a matter of fact what improvements are necessary for the safety and convenience of the public.

Tracks—Street Railroad Corporations—Tracks Can be Repaired by One Company Although Used by Both—Joint Use of Tracks Does Not Require Joint Action in Installing Them—Recommendation.—The switches, frogs and yokes required at 71st Street are used by both companies but they can be repaired by one. As a matter of practice, it is understood that such repairs are usually performed by one company. Special work is so constructed that it must be installed as one job and the fact that it is to be used jointly in certain places does not require the joint action of the two companies in installing it. As a practical matter the repairs in question can be made by either company. Recommended, that the 42nd Street Company be required to make the repairs without prejudice to any right it might have to look to the Ninth Avenue Company for contribution or reimbursement.

Hearings closed February 8, 1922. Order adopted and Opinion approved March 1, 1922.

This proceeding came on before the Commission upon its own motion. The hearing order was adopted January 10, 1922, directing that a hearing be had in the matter on January 18, 1922. A hearing was held that date and on February 8, 1922. Thereafter, the Order and opinion set forth below were adopted and approved respectively. Further facts appear therein.

ORDER

The Commission having on its own motion instituted the proceeding herein to inquire what repairs, improvements, charges or additions should be made to the street surface tracks at 65th Street and Broadway, and at 71st Street and Broadway and between those points, in the Borough of Manhattan, City of New York, in order to promote the security or convenience of the public and to secure adequate service and facilities for the transportation of passengers or property, and having by order dated January 10, 1922, directed a hearing herein to enable the Commission to determine (1) the nature, extent and location of such repairs, improvements, changes or additions, and (2) whether such repairs, improvements, changes or additions require joint action by two or more corporations, and having by the said order designated Lincoln C. Andrews, its Chief Executive Officer, to conduct the said hearing and take testimony and report the same, together with his opinion thereon, to the Commission for its decision and determination; and the said hearing having been duly held before the said Chief Executive Officer on January 18 and February 8, 1922, Alfred T. Davison, Esq., appearing for the Third Avenue Railway Company and for The Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, Michel Kirtland, Esq., appearing for The Ninth Avenue Railroad Company, Herbert S. Worthley, Esq., Assistant Corporation Counsel, appearing for The City of New York, and George H. Stover, Esq., Assistant Counsel, attending for the Commission; and the said Chief Executive Officer having transmitted to the Commission all the testimony taken and all the exhibits received in evidence at said hearing, together with his report and opinion thereon, dated March 3, 1922; and said report and opinion having been approved by the Commission; and the Commission being of the opinion that the repairs hereinafter specified are necessary to promote the security and convenience of the public and to secure adequate facilities for the transportation of passengers and property, and that the said repairs do not require the joint action of two or more corporations, but that the same can and should be performed by The Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, without prejudice to any right or claim which it may have to recover all or any portion of the expenses of such repairs from The Ninth Avenue Railroad Company, it is

ORDERED:

(1) That The Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company be and it hereby is directed to make any and all repairs, improvements, changes or additions to the special work connecting its tracks with the tracks of The Ninth Avenue Railroad Company, in the vicinity of 71st Street and Broadway, in the Borough of Manhattan, City of New York, which may be necessary to put said special work in perfect condition for the security and convenience of the public and to secure adequate service and facilities for transportation, such repairs, improvements, changes or additions to be not less than those indicated and specified in detail in Schedule A which is hereto annexed and made a part hereof.

(2) That a certified copy of this Order shall be served upon the Third Avenue Railway Company, The Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company and The Ninth Avenue Railroad Company in the manner prescribed by law.

(3) That within five (5) days after the receipt thereof, The Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company shall notify the Commission whether the terms of this Order noted and will be obeyed.

(4) That this Order shall take effect immediately and continue in force until modified or abrogated by further order of the the Commission.

SCHEDULE A

Minimum repairs to be made to street surface car tracks in vicinity of 71st Street and Broadway, New York City.

Opposite No. 2070 Broadway, hard center for wheel frog, east rail, southbound, Amsterdam Avenue track.

Hard center for wheel frog, west rail, northbound, Amsterdam Avenue track.

At trailing switch, northbound, Broadway into Amsterdam Avenue, new wheel and slot frog is necessary.

At trailing switch, southbound, Broadway into Amsterdam Avenue, new switch, mate, wheel and slot frogs and yokes, if necessary.

For switch, southbound, on 10th Avenue to Broadway, switch, mate, wheel and slot frogs and yokes, if necessary.

Weld frog, west rail, northbound track, opposite 2070 Broadway.

Weld the rail between mate and slot frog, northbound, opposite 2070 Broadway.

Strengthen the roof plates and tighten the whole switch.

Northbound and southbound trailing switch, tighten up frog supports, both wheel and slot.

Curved track from southbound trailing switch crossing, northbound, Tenth Avenue Line. Build up rails by welding, install new hard centers, strengthen up roof plates and tighten up all work.

REPORT AND OPINION

ANDREWS, *Chief Executive Officer*; I, Lincoln C. Andrews, Chief Executive Officer of the Transit Commission, authorized and designated by order of this Commission dated January 10, 1922, to conduct the hearing of this case, to take testimony in respect thereto and report the same, together with my opinion thereon, for the determination and decision of the Commission, hereby respectfully report as follows:

This proceeding was instituted by the Commission on its own motion to inquire as to the condition of the street surface railroad tracks at 65th Street and Broadway and 71st Street and Broadway and between those points in the Borough of Manhattan, City of New York, and as to the necessity for repairs, improvements, changes or additions thereto. By order dated January 10, 1922, the Commission ordered a hearing to be held on January 18, 1922, first, to enable the Commission to determine the nature and extent and location of such repairs, improvements, changes or additions and, second, to enable it to determine whether such repairs, improvements, changes or additions require joint action by two or more corporations.

Pursuant to such Order I conducted and held said hearing

on January 18, 1922, and on February 8, 1922. Upon the hearing, Alfred T. Davison, Esq., appeared for the Third Avenue Railway Company and The Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, Michel Kirtland, Esq., for The Ninth Avenue Railroad Company, Herbert S. Worthley, Esq., Assistant Corporation Counsel, for The City of New York and George H. Stover, Esq., Assistant Counsel, attended for the Commission. The testimony taken upon the hearing and the exhibits received in evidence thereon are all returned herewith.

The track in question lies on Broadway between 64th Street and 72nd Street. It is operated over by The Ninth Avenue Railroad Company and by The Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company which is part of the Third Avenue system. The Ninth Avenue line comes up Columbus Avenue, enters Broadway just below 65th Street, continues up Broadway and then runs north into Amsterdam Avenue just above 71st Street. The route of the Forty-second Street Company in this vicinity is entirely on Broadway, north of 71st Street and south of 65th Street, as well as between those two streets. The fact that the tracks of the two companies intersect near 65th Street and near 71st Street necessitates certain special work, and it is this special work which requires repair and especially the special work near 71st Street.

No question is raised as to the necessity for repairs. Mr. Francis G. Daniels, Assistant Electrical Engineer of the Commission, testified as to the condition of the tracks from 65th to 72nd Streets and his testimony was not questioned by the companies. He testified that at 65th Street, although the foundations of the track appeared to be defective, the track was in fair condition and would go through the winter; that no particular repairs were necessary for the track between 65th Street and 71st Street; but that repairs of a radical nature were required for the special work at 71st Street. He set forth in detail the nature and location of the parts for which repairs were required and both companies conceded that the repairs which he recommended were necessary.

The only matter in dispute is as to which company shall make the repairs or as to what proportion of the expense shall be borne by each. The Forty-second Street Company claims that

it is joint owner of the tracks between 65th and 72nd Streets and is willing to perform the work, provided that the Ninth Avenue Company will make an agreement and furnish security for paying one-half the cost. The Ninth Avenue Company claims that it is the sole owner of the tracks between 65th and 72nd Streets and contends that the entire cost must be borne by the Forty-second Street Company. The two companies are not in disagreement as to the facts on which they base their respective claims of ownership, but merely as to the legal conclusions which they draw from those facts.

It is not disputed that the Ninth Avenue Railroad Company was the first to construct track on Broadway between 65th and 71st Streets. It was incorporated July 29, 1859, and it acquired by assignment dated July 30, 1859, the franchise granted by the Common Counsel to certain individuals on December 28, 1853. The grants by the Common Council were ratified by acts of the Legislature (Chap. 140, Laws of 1854; Chap. 411, Laws of 1860). On December 30, 1882, the Board of Aldermen directed the Ninth Avenue Company to extend its route, the extension covering the part on Broadway between 65th and 71st Streets. This track had been constructed when the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company acquired, on June 21, 1884, a franchise on certain streets, including Broadway between 65th and 71st Streets. By Section 14 of Chapter 252 of the Laws of 1884 the Forty-second Street Company was prohibited from constructing its tracks in that portion of Broadway in which the Ninth Avenue Railroad was constructed. On November 24, 1884, it made an agreement with the Ninth Avenue Company for the use of its tracks, agreeing to pay an annual rental for the same and to construct and maintain the special work necessary to connect its tracks with those of the Ninth Avenue Company. This agreement, limited to 21 years, recited that the Ninth Avenue Company was "the owner of certain double tracks heretofore constructed and laid and now being used by it on the Boulevard (formerly known as the Bloomingdale Road) between Sixty-fourth Street and Seventy-second Street." So far there seems to be no dispute.

In 1892, the Ninth Avenue Company leased its road to the Houston, West Street and Pavonia Ferry Railroad Company, which later was merged with the Metropolitan Street Railway

Company. Under date of December 31, 1897, six companies, including the Metropolitan, the Third Avenue and the Forty-second Street Company, entered an improved motive power agreement which, in effect, superseded the agreement of 1884 between the Ninth Avenue and the Forty-second Street Company. By this, the Metropolitan Company, as lessee of the Ninth Avenue Railroad Company, granted to the Forty-second Street Company "the right to use in common the tracks of the Ninth Avenue Railroad Company upon said portion of the Boulevard between 65th Street and 71st Street for the unexpired period of time for which the lease to the Metropolitan Company has been given." I do not understand that it is claimed that the execution of this improved motive power agreement altered the fact that the Forty-second Street Company used the tracks of the Ninth Avenue Company as tenant, or that it is claimed that the former acquired any title to the tracks of the latter.

The agreement of 1897 provided, with respect to the tracks to be used in common pursuant to the terms of it, that the motive power might be changed, and regulated the manner in which and the company by which the change was to be made and how the cost of construction was to be divided between the companies using the tracks. It appears that, pursuant to this agreement, the Forty-second Street Company expended certain moneys in changing from horse-car to underground electric operation the tracks on Broadway between 65th and 71st Streets. It also appears that the Metropolitan Street Railway Company was re-organized as the New York Railways Company which went into the hands of a Receiver who was directed by order of the United States District Court for the Southern District of New York not to adopt the lease between the Ninth Avenue Railroad Company and the Houston, West Street and Pavonia Ferry Railroad Company, to cease operating the Ninth Avenue property at midnight between September 30, 1919, and October 1, 1919, and to deliver it to the Ninth Avenue Company; that the Ninth Avenue Company has been operating its property since it was delivered to it; that the Forty-second Street Company has been continuing to use the portion on Broadway between 65th and 71st Streets without paying rental therefor; that an action brought by the Ninth Avenue Company against the Forty-second Street Company to recover for the use and occupation of said track is

now pending in the Supreme Court and that an action in the Supreme Court by the Ninth Avenue Company to restrain the Forty-second Street Company from using said track is also pending.

From these facts the companies draw divergent conclusions. The Ninth Avenue Company contends that the Forty-second Street Company is now merely a tenant at will, but that, although the agreements of 1884 and of 1897 have expired as to the term and the rental, the provisions in them by which the tenant agreed to maintain the connection still define the obligation of the tenant in that respect. The Forty-second Street Company argues that if the agreements have no force for one purpose they have no force for any purpose. It claims that since it had a franchise for Broadway between 65th and 71st Streets and has paid for or contributed toward the construction of the existing tracks in that location, it has become the joint owner of those tracks and is therefore liable only for half the cost of the special work by which its tracks are connected with those in which it has a joint title. The Ninth Avenue Company denies that the expenditure of money by the Forty-second Street Company on the Broadway tracks between 65th and 71st Streets gave it any title to the property which it was using as tenant.

These questions are now before the courts and are judicial in their nature. As such they must be determined by the courts and not by this Commission. Unless it be that a ruling on those questions is necessary to a determination of the question before the Commission, it would be improper for me to express any opinion upon them; and as I view the section of the law under which the Commission is proceeding it is unnecessary for the Commission to pass upon the claims of the two companies as to their respective titles to the track on Broadway between 65th and 71st Streets.

That part of Section 50 of the Public Service Commission Law, which applies to this proceeding, reads as follows:

"If any repairs, improvements, changes or additions which the commission has determined to order require joint action by two or more of said corporations, the commission shall, before entry and service of order, notify the said corporations that such repairs, improvements, changes or additions will be required and that the same shall be made at their joint cost, and thereupon the said corporations shall

have thirty days or such longer time as the commission may grant within which to agree upon the part or division of cost of such repairs, improvements, changes or additions which each shall bear. If at the expiration of such time such corporations shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of such repairs, improvements, changes or additions the commission shall have authority, after further hearing, to fix in its order the proportion of such cost or expense to be borne by each corporation and the manner in which the same shall be paid and secured. But this section shall not be construed to authorize the commission to require two or more railroad corporations to unite in the erection of a union station."

This provision requires the Commission to give the companies an opportunity to agree upon the part or division of cost of the work which each shall bear, or, upon their failure to agree, to fix the proportion itself; but this is only where the improvements "require joint action by two or more of said corporations." The section says "joint *action*" and does not refer to joint liability for the cost. This seems to indicate that where the work may be performed by one company the Commission is not required to fix the proportion of cost which another company may be required to pay by reason of contract or other obligations. Whether another company may not have assumed or be otherwise required to contribute to the expense of an improvement which one company is required to make is a judicial question for the courts and, in my opinion, the Legislature did not intend to impose upon the Commission the duty of passing upon such questions before ordering improvements which it determines to be necessary as a matter of fact.

The primary function of the Commission is to determine as a matter of fact what improvements are necessary for the safety and convenience of the public. If, in addition, it is required to adjudicate upon claims between the companies, it will often be placed in a position where it must consider questions of law which can only be determined by the courts or must refrain from ordering a necessary improvement until the courts have disposed of questions raised by the companies as to their rights and titles. It would be unfortunate if the companies, by raising disputes themselves, could tie the hands of the Commission or delay the making of necessary repairs; and I think the provisions

of the section do not produce any such result. It seems that if the work can be performed by one company, the Commission may order that company to do it, without prejudice to any right which it may have to look to another company for all or part of the cost.

The switches, frogs and yokes required at 71st Street are used by both companies, but they can be repaired by one. As a matter of practice I understand that such repairs are usually performed by one company. The special work is so constructed that it must be installed as one job, and the fact that it is to be used jointly in certain places does not require the joint action of the two companies in installing it. As a practical matter the repairs in question can be made by either company.

Which company should be required to perform the work and, in the first instance, make the expenditures? If the Forty-second Street Company has a joint right in the tracks and in this special work, then it may, perhaps, be as just to impose the cost in the first instance on one company as on the other. If, however, the Forty-second Street Company has no right to use the track in question, it would seem that the Ninth Avenue Company should not be required to expend money for the purpose of enabling the Forty-second Street Company to run its cars where they have no right to go. As I have considered it unnecessary to consider the claims of either company and have no opinion thereon, I must assume that the courts are as likely to decide one way as another. In view of the possibility that the decision may be in favor of the Ninth Avenue Company, I recommend that the Forty-second Street Company be required to make the repairs, without prejudice, of course, to any right which it may have to look to the Ninth Avenue Company for contribution or reimbursement.

Dated March 3, 1922.

In the Matter of the LONG ISLAND RAILROAD COMPANY—Discontinuance of station at South Street, Jamaica, Long Island.

CASE No. 1727

Discontinuance of Station—Steam Railroad Corporation—Petition to Discontinue Station at South Street, Jamaica—Location of Station—Character and Use—Revenue Passengers Negligible.—The petition of the Railroad Company requested the Commission to permit it to discontinue its station at South Street, Jamaica, Borough of Queens, upon the ground, among other thing, that the traffic to and from such station is negligible and that it is not now and never has been of any benefit to the traveling public. The station is approximately 7/10 of a mile or 2500 feet south of the main Jamaica Station and 8/10 of a mile north of the Cedar Manor Station as located on the south side of South Street. The present character of the station and its improper use are such that it is little short of a public nuisance. Further, it seems that the local health authorities have been pressing the railroad company for reforms in this direction. No witness contradicted the evidence of the railroad company, which is confirmed by checks by the Transit Bureau, that the revenue passengers to and from this station are negligible—as little as one or two a day.

Discontinuance of Station—Steam Railroad Corporation—Evidence in the Case—No Complaints as to Abandonment—Recommendation.—Upon all the evidence, in this proceeding there is nothing which contradicts the two essential facts, namely, that the revenue traffic from the South Street Station upon such trains as have stopped there since its establishment has been and now is negligible and that no complaints have been received from citizens or civic bodies either by the Commission or the railroad and that until the abandonment of the station was asked for none of the former interested themselves in it sufficiently to make any complaints or representations either to the railroad or to the Commission. Recommended, therefore, that the Commission make its order directing and permitting the railroad company to discontinue the stopping of any trains at the South Street Station, Jamaica, and to remove the structures or shelters upon the platforms and any other appurtenances to such platforms, reserving to the Commission the right to reopen this proceeding at any time in the future and to make such other or further order or direction in the premises as justice and public necessity and convenience may hereafter require.

Hearings closed March 20, 1922. Order adopted and opinion approved March 28, 1922.

This proceeding came on before the Commission upon receipt of petition dated and verified February 17, 1922, of The Long Island Railroad Company, requesting the formal consent and approval of the Commission to the discontinuance of the station at South Street, Jamaica, in the Borough of Queens. The hearing order was adopted February 21, 1922, and directed a hearing take place on March 3, 1922. That hearing was held as well as a subsequent hearing on March 20, 1922. Thereafter the Commission adopted the order and approved the opinion set forth below. Further facts as to the proceeding are found therein.

ORDER APPROVING PETITION IN PART

The Long Island Railroad Company having by petition, verified February 17, 1922, made application to the Commission under Section 54 of the Railroad Law, for its consent and approval to the discontinuance of its station at South Street, Jamaica, in the Borough of Queens, and the Commission having by Order, dated February 21, 1922, directed that a hearing be held on said application and designated and certified Lincoln C. Andrews, Chief Executive Officer of the Commission to conduct said hearing and to take the testimony and report the same to the Commission together with his opinion thereon, and hearings having been duly held before the said Chief Executive Officer on March 3, and 20, 1922, and said Chief Executive Officer having rendered his report and opinion, dated March 25, 1922, wherein he finds and recommends that the Commission should approve the application to the extent that the company be permitted to discontinue the stopping of any trains at its South Street Station, Jamaica, and be directed to remove the structures or shelters upon the platform and any other appurtenances to such platforms and the Commission having approved and adopted the report of its Chief Executive Officer;

ORDERED that The Long Island Railroad Company be and it is hereby directed and permitted to discontinue the stopping of any trains at the South Street Station at Jamaica, in the Borough of Queens.

FURTHER ORDERED that The Long Island Railroad Company be and it is hereby directed to remove the structures and shelters upon the platforms and any other appurtenances to such platforms.

FURTHER ORDERED that this Order is made without prejudice to the right of the Commission to reopen this proceeding at any time in the future and make any other or further order or direction in the premises as justice and public necessity and convenience may hereafter require.

REPORT AND OPINION

ANDREWS, *Chief Executive Officer*; I, Lincoln C. Andrews, Chief Executive Officer, designated and authorized by the Transit Commission to conduct the hearing herein by certificate and order of the Commission dated the 21st day of February, 1912, pursuant to Sections 8 and 11 of the Public Service Commissions Law, do hereby report as follows:

This is an application by the Long Island Railroad Company by petition dated the 17th day of February, 1922, to discontinue its stations at South Street, Jamaica, Borough of Queens, upon the ground, among other things, that the traffic to and from such station is negligible and that it is not now and never has been of any benefit to the traveling public.

By an order dated July 30, 1914, the Public Service Commission for the First District directed the establishment of the station. Its order was affirmed upon certiorari by the Appellate Division of the Supreme Court. The plan of the station was approved by the order of the said Commission on May 31, 1917, as modified by said order. On or about October 6, 1917, the

company consented to a peremptory writ of mandamus issued by the Supreme Court of the State of New York directing it to complete the station and stop trains thereat not later than November 15, 1917. This was done and the company began stopping trains there on said date.

The South Street station is located on what is known as the old Southern Division of the railroad, which is the branch operating an electric service in a southerly direction from the main Jamaica Station to Far Rockaway, Long Beach and intermediate points. The station is approximately seven-tenths of a mile or 2500 feet south of the main Jamaica station and eight-tenths of a mile north of the Cedar Manor station and is located on the south side of South Street. The station is of the simplest character, being merely two cinder platforms approximately 190 feet in length with wooden structures or shelters located about the center of each platform. These structures or shelters are not closed in, but are open at one end or side. No agent is maintained at the station and it appears that its cleanliness and sanitary condition has been unsatisfactory.

The Chief of the Complaint Bureau reported that the first schedule in effect at the station comprised 8 trains in each direction, all being flag stops. This was in or about November of 1917. By May 28, 1918, the service had been reduced to four trains eastbound and three westbound, all making regular stops. In October, 1919, but two trains in each direction stopped at the station and at the present time there is but one eastbound train at 6:31 A. M. and two westbound trains at 7:56 A. M. and 7:54 P. M.

The main line of the railroad extends easterly from the main Jamaica station. On the main line is a station at Union Hall Street, which is practically in the center of Jamaica, six-tenths of a mile distant from the Main Station. Union Hall Street station is about half a mile or twelve minutes walk from the South Street station, while the main station is seven-tenths of a mile distant therefrom, requiring some fifteen minutes walk from South Street station. While the question of rates is not before the Commission in this hearing, yet it appears probable that the fares to and from the South Street station had a certain bearing on its use by the public. It would seem that the fare from South Street was from six to eight cents more than the fare from Union Hall Street to New York or Brooklyn.

It is sufficiently established by the evidence that the amount of revenue passenger traffic to and from this station has in the past been and now is negligible. Certainly it is clear that the traffic there did not and does not justify the railroad in maintaining a station building provided with an agent, ticket office, toilet facilities, etc. The present character of the station, however, and its improper use, are such that it is little short of a public nuisance and it seems that the local health authorities have been pressing the railroad company for reforms in this direction.

It would in my opinion be most unfair to require the railroad company to install a regular station with all facilities at this point, and no one has suggested it. A very significant feature is the fact that though train service at this station has been progressively diminished ever since its establishment, no complaint has ever been received by the Public Service Commission or the Transit Commission from any citizen or local civic body as to such train service. A witness for the railroad company stated that no such complaint had ever been received by it.

The neighborhood of the station is of a character that does not produce much steam railroad business. South Street and the streets adjoining, particularly to the south, are unpaved and muddy. There is nothing before me to show that there will be any change in the neighborhood in the near future which would produce revenue traffic at South Street station to any extent. Considerable testimony was given before me to the effect that various civic bodies and persons thought they would use the station if there were a sufficient number of trains, one witness suggesting that adequate service would involve stopping one-half dozen trains there morning and evening and a few more during the day. There is nothing before me to show that in 1917 and 1918, when trains about of this character were stopping at this station, there was any substantial use of them by the local residents. Mr. Joseph Sheldon, a member of the Transit Committee of the Central Jamaica Civics, who opposed the discontinuance of the station, made a very significant remark. "The trains have not been used in 1917 and 1918 because the neighborhood there was not developed; in fact even now it is not very popular, but there are ten or twenty thousand people who could make use of it." (Minutes, p. 253). As a matter of fact, admitting that these

people can make use of the station, it is evident that they do not. No witness contradicted the evidence of the railroad company, which is confirmed by checks by the Transit Bureau, that the revenue passengers to and from such station are negligible—about as low as one or two a day. Union Hall Street station can be reached by trolley from the neighborhood of South Street for a five-cent fare and the Chief of the Complaint Bureau of the Commission testified that in his opinion the people would rather take a seven-minute walk than pay the extra fare involved by boarding trains at the South Street station. I am not prepared to say that seven or eight minutes is an unreasonable distance to require passengers to walk to a steam or electric railroad. It would seem that a person living half way between South Street and Cedar Manor could walk to either point in about ten minutes. The community in that vicinity, as testified to by Mr. John J. Bliss, Page 266, is not developed. The streets are not paved and there are no sewers.

Upon all the evidence, while there is the usual sentiment in favor of having as many trains a day as possible, and plentiful opinion that some day, when the locality is paved, sewerred, and built up, the South Street station will be liberally patronized, yet there is nothing before me which contradicts the two essential facts, viz., that the revenue traffic from such station upon such trains as have stopped there since its establishment has been and now is negligible; and that no complaints have been received from citizens or civic bodies either by the Commission or the railroad and that until the abandonment of the station was asked for none of the former interested themselves in it sufficiently to make any complaints or representations either to the railroad or to the Commission. It is not improbable that at some time in the future the neighborhood may change in character to such an extent as to warrant a local train service. Although convinced that this is not the case now, I think that the Commission should not foreclose itself from such action as may be necessary in the future for the convenience of the public.

I therefore find and recommend that the Commission should make its order directing and permitting that the railroad company discontinue the stopping of any trains at the South Street station, Jamaica; that the company shall remove the structure or shelters upon the platform and any other appurtenances to such

platforms, reserving to the Commission the right to reopen this proceeding at any time in the future and make such other or further order or direction in the premises as justice and public necessity and convenience may hereafter require; and that the petition be accordingly granted to this extent.

In the MATTER OF THE APPLICATION of JOHN ADIKES and THOMAS ADIKES, composing the firm of J. & T. ADIKES, pursuant to the provisions of Section 27 of the Public Service Commissions Law, for an order directing the construction and establishment of a side-track and switch connection between a lateral line of railroad or private side-track and the line of railroad of The Long Island Railroad Company, at Jamaica, in the Borough of Queens, City of New York.

CASE No. 1901

Side-track and Switch Connection—Steam Railroad Corporation—Application to Modify Order—Storage Yard Facilities Required—Side-track and Switch Connection Obstacles in Way of Prompt Completion of Storage Yard.—This proceeding is an application by The Long Island Railroad Company for modification of an order entered in Case 1901 on January 27, 1916, so as to permit it to remove a side-track and switch connection at Jamaica connecting the main line of its railroad at that point with the property of J. & T. Adikes. It appears from the testimony in this proceeding that the Long Island Railroad is about to acquire 50 passenger cars for the purpose of improving its overtaxed facilities during next summer. It has no place to store these cars and use them in connection with its traffic, unless a proposed car storage yard at Jamaica can be completed by that time. It is of great importance that the railroad should be allowed to complete its storage yard at the earliest possible date. It seems that the side track and switch connection in question are obstacles in the way of the prompt construction of the car storage yard aforesaid.

Side-track and Switch Connection—Steam Railroad Corporation—Not an Inappropriate Installation at Time of Construction—Fact that Side-track Crosses Trolley Tracks at Grade Obviously Objectionable—No Question Whatsoever that Siding at Grade Can Longer Be Tolerated.—The side-track was not an inappropriate installation at the time of its construction when the railroad was at grade, the main station a considerable distance away and the community not nearly as thickly populated. But under present conditions, while it is doubtless a convenience to J. & T. Adikes, it crosses and occupies streets at grade and prevents a railroad improvement of great importance to the traveling public. In addition to these considerations, it seems that this side-track crosses trolley tracks at grade in two places and this is obviously objectionable. Upon the facts as they now exist, there is no question whatsoever that the present existing siding at grade and in or under

the space to be occupied by the storage cars is now unsafe and impracticable and should no longer be tolerated.

Side-track and Switch Connection—Steam Railroad Corporation—Order of Public Service Commission—Elevated Side-track—Messrs. Adikes to Build Own Elevated Side-track—Railroad Company to Connect Same Within Three Months Thereafter—No Compulsion upon Adikes to Commence or Complete Their Part of Work.—On January 27, 1916, the Public Service Commission made its order which directed the railroad company to establish a switch and *elevated* side-track on its own property between its railroad at Jamaica and a lateral private *elevated* side-track to be constructed by Messrs. Adikes upon their own property and across Tyndal Street and Archer Place, to the property line of the railroad company, such switch and side-track to be constructed by the railroad company within three months from the date of the completion of the Adikes' side-track construction. In other words, that Commission decided that the Messrs. Adikes must build their own *elevated* side-track up to the railroad company's line and that within three months thereafter the railroad company must connect the same with their own *elevated* tracks; until completion thereof the old siding was to be continued, but there was no compulsion upon the Adikes to commence or complete their part of the work at any given time.

Sidetrack and Switch Connection—Steam Railroad Corporation—Adikes Left in Comfortable Position—Delay in Performing Their Part of Work Intolerable—Justice and Changing Circumstances Require that Messrs. Adikes Be Deprived of Further Holding up an Important Improvement—Side-track Rights of a Private Firm Subordinate to Necessities of Traveling Public.—Messrs. Adikes were thus left in very comfortable situation. They had their siding, and it was advantageous to them to delay the construction of their part of the work as long as they could. In the latter they have been hitherto very successful. The delay on their part, however, has now become intolerable in view of the proposed acquisition of cars by the railroad and the necessity of completing the storage yard as provided in the Jamaica improvement plans. Both justice and changing circumstances now require that the Messrs. Adikes should be deprived of further power to hold up an important improvement as they have done in the past. The side-track rights of a private firm must be subordinate to the necessities of the traveling public and in this case the interest of the traveling public and of the railroad are as one.

Side-track and Switch Connection—Steam Railroad Corporation—Recommendation.—It is recommended that the Commission should now modify the order of the Public Service Commission of January 27, 1916, by eliminating paragraph (6) thereof which provides that The Long Island Railroad Company shall maintain and operate the sidetrack or switch connection now established, between its line of railroad and the property of said petitioners. Further, that in so far as permission may be granted by the Transit Commission, it should authorize the Long Island Railroad Company to take up and remove not earlier than June 1st, 1922, all of the existing sidetrack or siding and switch connections appertaining thereto as is upon its property or upon public streets, and further that the railroad company shall, as soon as the Adikes construction is substantially commenced, start the construction of its portion of the new *elevated* siding, and proceed with due diligence to complete the same in time to connect with the Adikes structure when completed.

Hearing closed April 20, 1922. Order adopted and Opinion approved April 25, 1922.

This proceeding came on before the Commission upon receipt of the following petition of The Long Island Railroad Company, by Ralph Peters, its President, dated and verified November 1, 1921.

PETITION

The petition of THE LONG ISLAND RAILROAD COMPANY respectfully shows and alleges as follows:

I. For many years prior to the year 1913 a side-track extended from the railroad of The Long Island Railroad Company at Jamaica in the Borough of Queens, City of New York, in a northeasterly direction across Archer Place (now Archer Avenue) to the mill and warehouse of J. & T. Adikes at Fulton Street and Tyndal Street (now 148th Street). In that year the said Railroad Company was engaged in elevating its railroad through Jamaica and in eliminating various grade crossings in the Borough of Queens under an agreement with The City of New York dated July 21st, 1911, which agreement had been ratified by Chapter 330 of the Laws of New York for the year 1913 and the plans for the work provided for the discontinuance of service over and the removal of the Adikes siding aforesaid. A notice had been served upon J. & T. Adikes that their side track would be discontinued **and put out of service on May 15th, 1913, when on May 12th, 1913, an order was made by Hon. Samuel T. Maddox, one of the Justices of the Supreme Court in an action begun in that court by J. & T. Adikes against The Long Island Railroad Company restraining the latter from removing said side track and from refusing to operate the same. After argument the injunction contained in said order was continued, by an order of the Supreme Court dated June 24th, 1913, until the issues in the action should have been finally determined by the Court. Upon the trial of the action in January, 1920, a judgment was entered in favor of the plaintiffs restraining the removal of said side track and the operation thereof until upon application by The Long Island Railroad Company the Public Service Commission for the First District ordered the discontinuance thereof. Upon appeal from said judgment by the railroad company it was reversed by the Appellate Division for the Second Department and a new trial granted. The opinion of the appellate court was handed down December 24th, 1914, and is reported in 165 A. D. at page 221. It was decided that The Long Island Railroad Company had been enjoined by the lower court from removing the siding in the exercise of a legal right but that the Public Service Commission was empowered to determine whether J. & T. Adikes should have a siding and that the burden rested upon them to initiate an application to the Commission for such a siding as provided in Section 27 of the Public Service Commissions Law (now Section 27 Public Service Commission Law). On September 21st, 1915, the plaintiffs in the action served their supplemental complaint setting forth the order of the Public Service Commission dated February 5th, 1915, hereinafter referred to. No second trial of the action has been had.**

II. By petition dated January 7th, 1915, J. & T. Adikes applied to the Public Service Commission for the First District for an

order directing the construction and establishment of a "side track and switch connection between the lateral line of railroad or private side track owned and operated with the line of the said Railroad Company (The Long Island Railroad Company) and specifying a reasonable compensation to be paid for the construction, establishment and maintenance thereof pursuant to the provisions of Section 27 of the Public Service Commission Law of the State of New York." A resolution was adopted by the Public Service Commission for the First District on January 8th, 1915, for a hearing upon said petition in its case No. 1901 and after taking testimony in said case an order was made by the Commission dated February 5th, 1915, granting the application; directing The Long Island Railroad Company to construct an elevated side track leading from its railroad at a point east of Guilford Street (now Sutphin Boulevard) over Archer Place and across the property of J. & T. Adikes to their mill and warehouse on Fulton and Tyndal Streets and directing the said Railroad Company to maintain and operate the side track then in place and leading to the Adikes mill until the side track provided for in said order should have been constructed and put in operation. The Commission having denied an application made by The Long Island Railroad Company for a rehearing the aforesaid order of the Commission was reviewed by the Appellate Division in the First Department upon a writ of certiorari issued by the Supreme Court and by order of said Appellate Division dated December 10th, 1915, the determination of the Public Service Commission as set forth in its order dated February 5th, 1915, aforesaid was annulled and the matter was remitted to the Commission with authority to make an order limiting the construction required to be made by The Long Island Railroad Company of the elevated side track to the line of its property to connect with a siding of J. & T. Adikes when constructed to the property line of the said Railroad Company, and in the discretion of the Commission to require the Railroad Company to maintain the old siding until the construction of the new. The decision of the Appellate Division is reported in 170 A. D. at page 429. After further hearings the Public Service Commission made its order dated January 27th, 1916, directing The Long Island Railroad Company to construct and establish a switch connection and side track upon its own property between its railroad at Jamaica and a lateral line of railroad or private side track to be constructed by J. & T. Adikes upon their own property and across Tyndal Street and Archer Place to the property line of the Railroad Company as shown upon a drawing received in evidence in the proceeding, said switch connection and side track to be constructed by the Railroad Company within three months from the date of the completion of such elevated lateral line of railroad or side track of J. & T. Adikes to the property line of the Railroad Company, and further required the Railroad Company to maintain and operate the side track or switch connection then established until the switch connection and side track provided for in said order should be constructed and put in operation. A copy of said order dated January 27th, 1916, is attached hereto marked "Schedule A". An application for a rehearing having been denied by the Commission a writ of certiorari was obtained from the Supreme Court to review the said order of the Public Service Commission dated January 27th, 1916, but thereafter by consent of all parties in interest said certiorari proceeding was discontinued and the aforesaid order of the Commission dated January 27th, 1916, was accepted by the

Railroad Company. An order of the Supreme Court discontinuing the proceeding was dated and entered March 8th, 1917. By resolution adopted July 5th, 1917, two plans prepared by J. & T. Adikes showing the general location and details of construction of the trestle to carry the side track to be erected upon their property and the floor details of the bridge to carry said side track across Archer Place and Tyndal Street were approved by the Commission.

III. By petition dated September 4th, 1917, J. & T. Adikes applied to the Board of Estimate and Apportionment of The City of New York for consent to construct, maintain and operate a bridge or structure over Archer Place and Tyndal Street. Said application was granted by resolution of the Board of Estimate and Apportionment adopted October 26th, 1917, and approved by the Mayor November 7th, 1917, and John and Thomas Adikes accepted the consent contained therein by agreement duly executed and dated November 15th, 1917. The paragraph numbered 14 in said consent required that J. & T. Adikes commence the construction of the structure authorized and complete the same on or before October 1st, 1918. By petition dated October 14th, 1918, J. & T. Adikes applied to the Board of Estimate and Apportionment for an extension of time to construct the said bridge over Archer and Tyndal Streets to November 1st, 1919, alleging that certain negotiations had been carried on between J. & T. Adikes and officers of The Long Island Railroad Company looking toward the construction of a side track in a location different from that contemplated by the final order of the Public Service Commission aforesaid and the consent granted by the Board of Estimate and Apportionment, and that it was not until after October 1st, 1918, that information had been received that the negotiations had been terminated by the Railroad Company and that the construction of the side track must proceed in accordance with the said final order of the Public Service Commission; that during said negotiations J. & T. Adikes had done nothing toward procuring the necessary materials for the completion of the bridge structure and that in view of the conditions of the war then in progress great difficulty would be experienced in obtaining the steel required for the bridge. By resolution adopted December 20th, 1918, the Board of Estimate and Apportionment extended the time for the completion of said bridge to November 1st, 1919, upon condition that the said J. & T. Adikes permit The Long Island Railroad Company to remove the existing track connecting with their premises within one month after the completion of said bridge. By petition dated October 21st, 1919, J. & T. Adikes applied to the Board of Estimate and Apportionment for a further extension of time to complete their bridge over Archer and Tyndal Streets to November 1st, 1920, alleging that the width of Archer Street at the proposed point of crossing had not been finally determined and that the petitioners could not proceed with the erection of the structure until the location of the columns supporting the same had been fixed at the point where the curb line of Archer Street should be fixed and designated upon the City map. By resolution adopted December 30th, 1919, the Board of Estimate and Apportionment extended the time to construct the bridge to November 1st, 1920, upon condition that J. & T. Adikes permit the Railroad Company to remove the existing track connecting their premises within one month after the completion of the bridge. On September 20th, 1920, J. & T. Adikes addressed a communication to the Board of Estimate and Apportionment stating that they had not built the

bridge in question owing to the fact that the City had under consideration the widening of Archer Place from a 50 foot to a 70 foot street and asking for a further extension for another year. By resolution dated October 1st, 1920, the Board of Estimate further extended the time to construct the bridge to November 1st, 1921, upon condition that the Railroad Company be permitted to remove the existing track connecting with their premises within one month after the completion of the bridge. On October 21st, 1921, the petition of Thomas Adikes dated October 8th, 1921, asking a further extension of time to November 1st, 1922, to construct said bridge was presented to the Board of Estimate and Apportionment and referred to the Committee on Franchises. Said petition alleges that there is still pending before the Borough President of Queens the question of widening Archer Place at the point proposed to be crossed by the bridge and that until the final widening of said street is fixed J. & T. Adikes cannot proceed with the construction of the bridge.

IV. The failure of J. & T. Adikes to construct the private side track upon their property and across Archer Avenue up to the Railroad Company's property line has delayed and prevented the construction of the connection between said private side track and the tracks of the Railroad Company and the removal of the long side track now leading down from the Railroad Company's embankment south of Archer Avenue and west of Sutphin Boulevard upon and along Archer Avenue, across Sutphin Boulevard and then across Archer Avenue east of Sutphin Boulevard to the Adikes mill on Fulton Street. The continuance and use of this existing side track in the bed of the two streets as above set forth and the operation of cars upon it are dangerous and extremely objectionable and undesirable, both from the standpoint of the Railroad Company and the standpoint of the public using the streets. The Sutphin Boulevard crossing also involves a crossing at grade of the Manhattan and Queens Traction Corporation, the cars of which company are in daily operation over the crossing. The continuance of said siding upon the surface of the streets prevents a compliance by the Railroad Company with the letter and spirit of the aforesaid contract with The City of New York for the elimination of grade crossings in the Borough of Queens, and prevents the improvement of Archer Avenue at the points of crossing.

V. The inability of the Railroad Company to remove the said existing side track because of the court order and the order of the Public Service Commission as above set forth prevents the completion of the railroad embankment west of Sutphin Boulevard and the completion of the Foley Avenue approach to the Jamaica Station. The order of the Public Service Commission for the First District made August 1st, 1911, in case 1378 granting permission to The Long Island Railroad Company to discontinue its then existing station at Twombly Place, Jamaica, was conditioned upon the construction of the present main Jamaica Station, the plans for which provided an approach at Foley Avenue. After an inquiry in its case No. 1754 the said Commission made its order dated December 2d, 1913, requiring the said Railroad Company to immediately provide said suitable approach to its Jamaica Station from the north and south sides of the right of way at the west or Foley Avenue end of said station, and that such approach be constructed and put in use not later than January 1st, 1914. The completion of the said approach has been made impossible by the presence of the aforesaid Adikes siding

and the Railroad Company has petitioned the Commission for extensions of time to complete it because of its inability to remove said siding. The Company's time to construct the approach in accordance with the order dated December 2d, 1913, was last extended to January 11th, 1922, by order of the said Public Service Commission dated January 25th, 1921.

VI. The existence and continued use of the present Adikes side track prevents the construction of a passenger coach storage or holding yard on the railroad embankment and property adjoining the southerly side of Archer Avenue west of Sutphin Boulevard and the Jamaica Station. The plans for the elimination of grade crossings through Queens and for the Jamaica Improvement contemplated the construction of such a yard at the point referred to but such construction cannot be undertaken until said siding is removed from the site for the yard. The yard when completed will be used for the temporary storage and holding of electric passenger cars and electric trains to Brooklyn and Manhattan will be made up therein it being in immediate proximity to the platforms from which they are operated. At the present time, as a temporary expedient and until this yard is completed, the electric passenger cars used in this service are stored on long sidings on the southerly side of the right of way extending from Prospect Street to Brenton Avenue in Jamaica. Such location is inconvenient because if its distance from the starting point of the trains and the shifting of cars and trains from said storage tracks across the east and westbound main operating tracks to the northerly platforms of the Jamaica Station is dangerous and unsatisfactory. These temporary crossover tracks from south to north are not controlled by interlocking devices but are operated by hand-thrown switches. The use of the storage tracks in question has increased railroad travel over several grade crossings in the Village of Jamaica and the storage of cars on such tracks interferes with the view of trains approaching on the main tracks. Operating costs are substantially increased by the storage of cars on the tracks aforesaid and the operation of said hand-switches, and to control said switches by interlocking devices would be very expensive as a temporary expedient. The storage tracks referred to do not provide sufficient facilities or facilities of the character needed for the storage and make up of the electric trains referred to and the Railroad Company's operation will be substantially improved and danger reduced by the construction and use of the storage yard along Archer Avenue where the tracks and train movements would be controlled by pneumatic interlocking.

VII. The construction of the elevated sidetrack by J. & T. Adikes upon their property and across Archer Street has been unreasonably and improperly delayed by them and if they desire sidetrack facilities as set forth in their petition to the Public Service Commission they should be required to construct the track upon their property and across the highways at once, to the end that the Railroad Company may connect the same with its operating tracks and remove the siding, the existence of which prevents the completion of the work above set forth. The width of Archer Avenue at the point where it will be crossed by the elevated siding has been definitely fixed and determined by the proper City authorities and no reason exists for further delaying the work of construction.

Wherefore, your petitioner prays that the order of the Public Service Commission for the first District dated January 27th,

1916 be amended so as to provide that unless the lateral line of railroad or private side track to be constructed by J. & T. Adikes upon their own property and across 148th Street (formerly Tyndal Street) and Archer Avenue (formerly Archer Street) is completed within three months the requirement that the existing track be continued, contained in said order (paragraph 6) shall become and be null and void and of no effect and The Long Island Railroad Company shall thereupon be permitted, in so far as permission may be granted by the Transit Commission, to remove the side track or switch connection now established between its line of railroad and the property of J. & T. Adikes on 148th Street between Fulton Street and Archer Avenue at Jamaica in the Borough of Queens, and your petitioner further prays for such other and further relief as may be proper in the premises.

On April 11, 1922, the Commission adopted a hearing order directing that a hearing be had in this matter on April 20, 1922. A hearing was held that day after which on April 25, 1922, the order and opinion set forth below were adopted and approved respectively. For the order of January 27, 1916, see 7 P. S. C. R. (1st Dist., N. Y.) 6. Further facts appear in the Order and Opinion which are as follows:

APPROVAL ORDER

The Public Service Commission for the First District, having on the 27th day of January, 1916, adopted an Order herein which provided, among other things, "6. That said The Long Island Railroad Company shall maintain and operate the side track or switch connection now established, maintained and operated between its line of railroad and the property of said petitioners situated on the east side of Tyndal Street between Fulton Street and Archer Place at Jamaica, in the Borough of Queens, City of New York, until the switch connection and side track herein provided for shall have been constructed and put in operation."; and the said The Long Island Railroad Company having by petition, dated November 1, 1921, made application to the Commission for an order modifying the said Order, dated January 27, 1916, in respect to the provision above quoted and the Commission having on the 11th day of April, 1922, adopted an Order directing that a hearing on said application be held before Lincoln C. Andrews, Chief Executive Officer to the Commission, duly designated and certified to conduct said hearing on April 20, 1922, at 10:30 o'clock in the forenoon, and the said hearing having been duly held, and The Long Island Railroad Company, J. & T. Adikes and The City of New York, having duly appeared by counsel at said hearing, and the Chief Executive Officer having submitted his report and opinion, dated April 24, 1922, wherein he finds and recommends that public convenience and necessity require that the said The Long Island Railroad Company be permitted to remove the said switch connection and sidetrack to provide space for a storage yard for additional cars to be purchased and used by the said The Long Island Railroad Company in the transportation of passengers;

ORDERED

(1) That paragraph (6) of the order herein dated January 27, 1916, above quoted be and the same hereby is in all respects abrogated except as hereinafter provided.

(2) That the said The Long Island Railroad Company be and it hereby is permitted to remove the said switch connection and sidetrack now maintained upon its property as aforesaid on and after June 1, 1922, but not prior thereto.

(3) That paragraph (2) of said order herein dated January 27, 1916, be and the same hereby is modified and amended to read as follows, to wit; that said The Long Island Railroad Company shall construct and establish the portion of the new elevated sidetrack together with the necessary switch connections, which were required to be constructed and established by it upon its own property pursuant to said Order, and shall commence and complete the same so as to be ready for operation by the date when the portion of such elevated sidetrack as is to be constructed by J. & T. Adikes upon their own premises and public streets shall be completed and ready for operation; the said construction by The Long Island Railroad Company to be completed in time to connect with the construction to be made by J. & T. Adikes.

(4) That in all other respects the said order of the Public Service Commission for the First District herein dated January 27, 1916, be and the same hereby is affirmed.

REPORT AND OPINION

ANDREWS, *Chief Executive Officer*: I, Lincoln C. Andrews, Chief Executive Officer, authorized and designated by certificate and order of the Commission dated April 11, 1922, to conduct the hearing herein and to take the testimony and report the same to the Commission with my opinion, do hereby report as follows:

This case has been the subject of long hearings, considerable litigation and several orders of the predecessors of the Transit Commission. The present application, however, and the facts bearing thereon, can be reduced to simple terms. I briefly outline the physical situation of the locality and facilities affected.

The Long Island Railroad Company main line runs approximately east and west through Jamaica. Its main station in Jamaica is located at the southwest corner of Guilford Street (formerly Sutphin Boulevard) and Archer Place, which latter street is approximately parallel to the main tracks. The station building is separated from the station platforms by the main line tracks, which platforms and all tracks, except the siding hereinafter mentioned, are upon an elevated structure. Under this elevated structure runs Guilford Street, which is a north and south street and a wide thoroughfare of importance. To the west Foley Avenue, also a north and south street, runs under the elevated structure, but at present

the arch carrying the latter street under the elevated structure is not completed and only a foot-way leads under the tracks.

At the time the Jamaica improvement which carried the Long Island tracks through Jamaica upon an elevated structure was designed, it was intended to construct a coach yard or car storage yard, comprising 5 tracks, north of the main line tracks and west of the station building, extending 700 feet west of Foley Avenue and 600 feet east of Foley Avenue. A retaining wall was built some distance to the north of the main line tracks along the south side of Archer Place; the space between such retaining wall and main tracks is intended for the car storage yard aforesaid. The yard tracks will be upon a fill between the retaining wall and main tracks, which fill has not been completed owing to the existence of the siding hereinafter mentioned. It appears from the testimony that the Long Island Railroad is about to acquire 50 passenger cars for the purpose of improving its overtaxed facilities during next summer. It has no place to store these cars and use them in connection with its traffic unless the car storage yard in question can be completed by that time. For this reason it is of great importance that the railroad should be allowed to complete its storage yard at the earliest possible date.

Two blocks to the east of Guilford Street, the firm of J. & T. Adikes has a mill or warehouse north of Archer Place and east of Tyndal Street. A number of years ago and prior to the elevation of the Long Island tracks and the establishment of the present main station above mentioned, there was installed a siding or side-track or spur track leading into the Adikes premises. The stub end of this track commences at a point in their property north of Archer Place and east of Tyndal Street. It runs thence at grade in a general southerly direction along the interior of the block to Archer Place, crosses Archer Place diagonally on a curve across its intersection with Tyndal Street, continues with a curve to the southwest and then to the northwest upon private property back to Archer Place near Guilford Street, crosses Guilford Street and continues along Archer Place to the westerly, and at a point not far from the northwest corner of the Long Island station, goes through a gap in the retaining wall above mentioned and there commences to ascend upon an earth embankment until it joins the main line tracks at a point west of Foley Avenue. This siding is used for carrying freight cars propelled by steam locomotives into the premises of

J. & T. Adikes. Not only does this siding cross Archer Place, Tyndal Street and Guilford Street and occupy part of the surface of Archer Place at grade, but it ascends diagonally through the space between the retaining wall and the main tracks which will have to be filled in before the car storage yard can be completed.

This side-track was not an inappropriate installation at the time of its construction when the railroad was at grade, the main station a considerable distance away, and the community not nearly as thickly populated. But under present conditions, while it is doubtless a convenience to J. & T. Adikes, it crosses and occupies streets at grade and prevents a railroad improvement of great importance to the travelling public. In addition to these considerations, it seems that there is a trolley line which approaches Guilford Street from the west along Archer Place and turns south on Guilford Street past the main station under the tracks. The side-track and the trolley tracks cross each other at grade in two places and this is obviously objectionable. Moreover, it is desirable that Foley Avenue, which now furnishes only a foot-way under the railroad tracks, should be opened for vehicular traffic.

Upon the facts as they now exist, there is no question whatsoever that the present existing siding at grade and in or under the space to be occupied by the storage yard is now unsafe and impracticable and should no longer be tolerated; and the distinguished counsel who represented the Messrs. Adikes before me produced no evidence and made no contention to the contrary. Indeed the evidence produced by the Long Island Railroad Company upon this point establishes the facts beyond a reasonable doubt.

This brings me to a brief discussion of the existing legal and regulatory situation. The petition of the Long Island Railroad Company filed with the Commission and dated November 1, 1921, contains a complete statement of the history of the proceedings and litigations and reference may be made thereto for a fuller statement thereof. In brief, it sets forth that for many years prior to 1913 the Adikes side-track as described above had existed and that in 1913 when the elevation of the railroad was under progress, the railroad notified Messrs. Adikes that their sidetrack would be discontinued. The railroad was, however, temporarily enjoined from so doing in an action in the Supreme Court. Final judgment restraining the removal of the siding was had in this action in January, 1920, but upon appeal the judgment was reversed by

the Appellate Division, Second Department, (*Adikes v. Long Island Railroad Company*, 165 A. D. 221), which continued the injunction but decided that the Public Service Commission had power to determine whether the Messrs. Adikes should have a siding and that the burden rested upon them to initiate an application to the Commission for such a siding as provided in Section 27 of the Public Service Commission Law.

Upon the petition of Messrs. Adikes the Public Service Commission for the First District in 1915 in this case made an order which in substance continued the existing side-track and directed the Long Island Railroad Company to construct an elevated siding from a point east of Guilford Street over Archer Place to the Adikes mill. Upon *certiorari* the Appellate Division annulled this determination and remitted the matter to the Commission with authority to make an order limiting the construction required to be made by the Long Island Railroad Company to an elevated side-track to connect with the Adikes siding when constructed to the property line of the said railroad company, and in its discretion to require the old side-track to be maintained until the completion of the new elevated one. (*People ex rel. L. I. R. R. Co. v. Public Service Commission*, 170 A. D. 429.)

January 27, 1916, the Public Service Commission made its order which directed the railroad to establish a switch and elevated side-track on its own property between its railroad at Jamaica and a lateral private elevated side-track to be constructed by Messrs. Adikes upon their own property and across Tyndal Street and Archer Place to the property line of the railroad company, such switch and side-track to be constructed by the railroad company within 3 months from the date of the completion of the Adikes side-track construction. And the order further required the railroad to maintain and operate the side-track then (and now) established until the elevated side-track should have been completed.

In other words, the Public Service Commission decided that the Messrs. Adikes must build their own elevated side-track up to the railroad company's line and that within 3 months thereafter the railroad must connect the same with their own elevated tracks; until completion thereof the old siding was to be continued; but there was no compulsion upon Adikes to commence or complete their part of the work at any given time. Plans for such constructions were approved by the Public Service Commission.

Messrs. Adikes were thus left in a very comfortable situation. They had their siding, and it was advantageous to them to delay the construction of their part of the work as long as they could. In the latter they have been hitherto very successful. They made various applications and had sundry negotiations with the Board of Estimate and Apportionment and sundry other City authorities not necessary to state here, in connection with the construction of their elevated side-track. The Board of Estimate and Apportionment granted consent thereto in 1917. Owing to a proposed widening of Archer Street, and certain other reasons, their time to complete the construction was extended by said Board several times up to the fall of 1921.

The delay on the part of J. & T. Adikes has now become intolerable in view of the proposed acquisition of cars by the railroad and the necessity of completing the storage yard as provided for in the Jamaica improvement plans. Until comparatively recently the latter was not of very serious importance and the railroad, as well as the Public Service Commission, did not take action to hasten the work to be done by Messrs. Adikes and the consequent removal of the existing side-track. It is, however, very evident to my mind that the increase of traffic, both pedestrian, vehicular and street railway on Guilford Street, Archer Avenue, etc., as well as the general policy of the City with respect to grade crossings or tracks in street, at grade and particularly the exigencies of public travel next summer now require that the existing side-track should be removed so that the storage yard can be completed and the Foley Avenue crossing can be finished. The plan of the present main Jamaica station (as shown in Public Service Commission Case 1378) provided for an approach at Foley Avenue which has been and now is made impossible by the presence of the Adikes siding. There are further operating and engineering facts emphasizing the necessity of the completion of the storage yard which I do not deem it necessary to state in detail, but which are likewise of compelling influence upon the proposition.

The order of the Public Service Commission of January 27, 1916, which is now in force has been partly stated above. To make its effect a little clearer; it provides in paragraph (6) thereof that the Long Island Railroad Company shall maintain and operate the existing side-track above described until the new elevated side-track and switch connection provided for in said order shall have

been constructed. Under this provision of the existing order, the Long Island Railroad Company could not remove the existing siding and consequently, inasmuch as no time was specified in said order when Messrs. Adikes must commence or complete the elevated siding to be constructed by them, and as the Long Island Railroad Company was required by said order to build their part of the elevated siding within 3 months from the date of the completion of Adikes's part of the elevated siding, and until then had to maintain the existing siding, the Messrs. Adikes were not bound to build an elevated track, but yet the railroad company could not remove the existing track until they did so. So far as appears, they have not yet contracted for the construction of their elevated siding, but have merely prepared plans and secured municipal consents thereto.

Paragraph (7) of said order provided that the same should take effect immediately and continue in force until changed or abrogated by the Commission. This provision reserves to the Commission power to make such new order as justice and changing circumstances might require. In my opinion both justice and changing circumstances now require that the Messrs. J. & T. Adikes should be deprived of further power to hold up an important improvement as they have done in the past. The side-track rights of a private firm must be subordinate to the necessities of the traveling public and in this case the interests of the traveling public and of the railroad are at one. The side-track as now existing has ceased to be safe and practicable. Counsel for Adikes did not in any respect oppose or contravene the facts or the necessities for the situation as I have stated them. Application was made for a 30-day adjournment upon the ground that there was some dissension between certain members of the Adikes family, this being the reason why they were not prepared to start constructing; and consequently the present siding which so impedes the important construction above described should be allowed to continue in *statu quo* for another 30 days. The ground advanced for the adjournment seemed to me wholly insufficient and irrelevant to the situation, and the adjournment asked for was denied. A delay of this kind might prevent the construction of the storage yard in time to accommodate the new cars necessary for summer traffic, although Mr. Morris, Chief Engineer of the railroad company, stated that the storage yard could be completed in 30 days after the railroad was allowed to commence work.

Upon the whole record and the testimony and exhibits before me, I am of the opinion that Messrs. J. & T. Adikes have had ample time to commence and complete the work required to be done by them in connection with their part of the elevated side-track required by the Public Service Commission's order of January 27, 1916, and could have done so by the exercise of reasonable diligence. Delay in completing the same cannot be ascribed to the fault of the railroad company, inasmuch as it was under an injunction. If the said order is modified as hereinafter suggested, it will nevertheless take some time to vacate such injunction. J. & T. Adikes may be inconvenienced by the action which I shall recommend, but diligence upon their part in proceeding with and completing the construction of the elevated siding required of them would have prevented, and if promptly done, will prevent any such inconvenience. Any such inconvenience J. & T. Adikes may suffer is their own fault. The present application of the Long Island Railroad Company to this Commission, by petition dated November 1, 1921, is

"that the order of the Public Service Commission for the First District dated January 27th, 1916, be amended so as to provide that unless the lateral line of railroad or private side track to be constructed by J. & T. Adikes upon their own property and across 148th Street (formerly Tyndal Street) and Archer Avenue (formerly Archer Street) is completed within three months the requirement that the existing track be continued, contained in said order (paragraph 6), shall become and be null and void and of no effect and The Long Island Railroad Company shall thereupon be permitted, in so far as permission may be granted by the Transit Commission, to remove the side track or switch connection now established between its line of railroad and the property of J. & T. Adikes on 148th Street between Fulton Street and Archer Avenue at Jamaica in the Borough of Queens, and your petitioner further prays for such other and further relief as may be proper in the premises."

After the filing of the petition, efforts were made by the Transit Commission to negotiate and expedite the construction of the new elevated siding without the necessity of a formal hearing and order. J. & T. Adikes evinced no spirit of co-operation in these efforts. It became hopeless to proceed further along these lines. I see no prospect that J. & T. Adikes will do anything definite in the way of construction until they have to.

It is my opinion and I recommend that the Commission should now modify the order of the Public Service Commission of January 27, 1916, by eliminating paragraph (6) thereof which reads as follows:

"That said The Long Island Railroad Company shall maintain and operate the sidetrack or switch connection now established, maintained and operated between its line of railroad and the property of said petitioners situated on the east side of Tyndal Street between Fulton Street and Archer Place at Jamaica in the Borough of Queens, City of New York, until the switch connection and sidetrack herein provided for shall have been constructed and put in operation."

Further, that, in so far as permission may be granted by the Transit Commission, it should authorize the Long Island Railroad Company to take up and remove not earlier than June 1st, 1922, all of the existing side-track or siding and switch connections appertaining thereto as is upon its property or upon public streets. Any preliminary work which does not interfere with the existing siding may be done prior to said date. In other respects the said order should remain in force.

The effect of this will be that Messrs. Adikes, if they want any siding at all, must at once commence construction of their elevated siding. The Commission should further provide that the railroad company shall, as soon as the Adikes construction is substantially commenced, start the construction of its portion of the new elevated siding, and proceed with due diligence to complete the same in time to connect with the Adikes structure when completed.

I am convinced that the existing siding, at least so far as it affects the construction of the storage yard, should be eliminated in time for the railroad company to accomplish the completion of the storage yard which is very important for use for summer traffic. It is true that this action may result in depriving the Adikes of any siding for some time unless they proceed with promptness and diligence. But as above stated, this is not the fault of the railroad company or of the Transit Commission; all the delay has been caused by the injunction secured by J. & T. Adikes and their other dilatory tactics. Private siding rights may be discontinued upon the application of the railroad corporation if, in the opinion of the Commission, they become unsafe or impracticable (Public Service Commission Law, Section 27, paragraph 2). That the latter is the fact under the circumstances here, I have no hesitation in concluding.

In the Matter of the Hearing on the Motion of the Commission as to the proposed new Local Passenger Tariff of the NEW YORK, WESTCHESTER & BOSTON RAILWAY COMPANY identified as P. S. C. 1 N. Y. No. 18, issued October 18, 1919 and effective November 19, 1919.

CASE NO. 2433

Fares—Steam Railroad Corporation—New Tariff Increasing Rate of Fare—Original Decision in Case—Opinion by Appellate Division—Five Cent Rate of Fare in City Inadequate—Ruling of Court Binding Upon Commission—Commission's Determination Whether Proposed Rate of Seven Cents is Reasonable.—In the original opinion of Deputy and Acting Commissioner Glennon dated January 30, 1920, upon which the Public Service Commission's order of that date was made, it was in effect found as a fact that the five cent rate between stations in the City of New York was unreasonable to the company. In the opinion of the Appellate Division it was stated that "it is evident that the contemplated public service cannot be rendered at the rate of fare prescribed in the ordinance of the City of New York", namely, five cents. It thus appears that in the view both of the former Public Service Commission, First District, and of the court in which was had upon certiorari, the present rate of five cents is inadequate and that some increase should therefore be allowed. This ruling is to be regarded as binding upon this Commission. This leaves for the Commission to determine merely whether the proposed rate of seven cents is reasonable.

Fares—Steam Railroad Corporation—New Tariff Increasing Rate of Fare—Evidence Upon Former Hearings Indicated Company Not Making Sufficient to Pay Operating Expenses and Taxes—Results of Operation Year 1920—Results of Operation for First Quarter Year 1921—Deficits—Estimates for Year 1921 Under Rate of Fare of Five Cents and Proposed Rate of Seventy Cents.—It appeared upon the former hearing that upon the then existing rates of fare the company "was not making sufficient to pay its operating expenses and taxes". When the case was re-opened after the decision by the Appellate Division, further evidence as to the result of operation were put in evidence showing the actual results down to June 30, 1920, with estimated results to December 31, 1920. When the case was again reopened after the decision by the Court of Appeals, the figures showing the actual results of operation were brought down to April 30, 1921. For the purpose of this decision, it is deemed sufficient to state the actual figures for the year 1920 and for the first four months of 1921. These figures are as follows: Year 1920—Deficit \$1,807,182. First Quarter Year 1921—Deficit \$608,736. Company's estimate for Year 1921 at five cent rate of fare Deficit \$1,686,334. Company's estimate for Year 1921 at proposed rate of seven cent fare Deficit \$1,490,355.

Fares—Steam Railroad Corporation—New Tariff Increasing Rate of Fare—Present Rate of Fare Manifestly Inadequate—Findings and Decision.—It is stated upon the figures submitted that it is manifest that the present rates are inadequate and even under the proposed rates, according to the company's estimates, there will be only a small balance after payment of operating expenses and taxes applicable to the payment of interest on the company's indebtedness. It is found, therefore, and decided that: (1) The present rate of fare between stations in The

City of New York, of the New York, Westchester & Boston Railway Company, to wit, five cents, is insufficient; (2) the increased rate of fare between stations in The City of New York, proposed by the New York, Westchester & Boston Railway Company in its Local Passenger Tariff, identified as P. S. C.—1 N. Y.—No. 18, issued October 18, 1919, to wit, seven cents, is reasonable and should be allowed: (3) the proposed Local Passenger Tariff of the New York, Westchester & Boston Railway Company identified as P. S. C.—1 N. Y.—18, issued October 18, 1919, should be put into effect upon the shortest notice consistent with the rules and practices of the Transit Commission.

Hearings closed June 29, 1921. Order adopted and report and opinion approved May 2, 1922.

The facts as to this proceeding are fully set forth in the report and opinion of Ex-Counsel Kingsbury and the Order of the Commission of May 2, 1922 below. Under date of March 16, 1922, Fred. W. Lindars, Chief Accountant to the Commission made the following report to Commissioner Harkness regarding this case.

In accordance with your instructions I have looked into the operating returns of the New York, Westchester and Boston Railway Company, down to as late a date as were available, namely, December 31, 1921.

There is attached hereto, a comparative statement showing these results by quarters for the years 1920 and 1921 together with significant operating statistics for the same periods. These figures speak for themselves. It will be noted however that while there has been a steady improvement in the gross operating income of the Company during each of the quarters of the year 1921 as compared with the preceding year, the amount of such improvement in my judgment does not materially relieve the net corporate deficit in which the companies have been laboring for some time past. The amount of Fixed Charges for the year 1921 of \$1,787,558.73 represents an increase of \$54,599.73 over the Fixed Charges for the year 1920. The Net Corporate Deficit for the year 1921 amounting to \$1,737,716.35 shows the improvement over the year 1920 of \$69,466.10.

About May or June of 1921 the Company made an estimate of the probable operating results on the basis of a five-cent fare which figures are shown in Colonel Kingsbury's report. This estimate indicated that a Net Corporate Deficit would be incurred during the fiscal year of 1921 of \$1,686,334.14. The actual results of operation as reported in the sworn reports of the Company for the year 1921 amounted to \$1,737,716.35 or \$51,382.21 greater than the estimate made by the Company early in that year.

Taking all of these facts into consideration, it is my opinion that the conclusions reached by Colonel Kingsbury are sound and just and apply today with the same force as they did at the date the report was written, namely, July 11, 1921.

The comparative statement referred to in Mr. Lindars' report was in part as follows: It is condensed by years and shows the comparative results of operation for 1920 and 1921. The quarterly figures do not appear here but are shown on the original.

TRANSIT COMMISSION

NEW YORK, WESTCHESTER AND BOSTON RAILWAY COMPANY

Comparative Statement Showing the Results of Operation During the
Fiscal Years Ended December 31, 1920, and December 31, 1921,
Together with Significant Operating Statistics

	Year Ended December 31st 1920	1921	Increase or Decrease
<i>Transportation Revenue</i>			
Passenger fares	\$ 844,901.16	\$1,063,248.90	\$ 218,347.74
Baggage	69.00	132.02	63.02
Express	96.72	110.11	13.39
Freight	27,713.23	61,968.33	34,255.10
Miscellaneous	666.97	666.97
<i>Revenue from other railway Operations</i>	39,485.14	44,779.49	5,294.35
<i>Total Operating Revenue</i>	912,265.25	1,170,905.82	258,640.57
<i>Non-Operating Revenues</i>	13,511.09	16,992.81	3,481.72
<i>Total Revenues</i>	925,776.34	1,187,898.63	262,122.29
<i>Expenses</i>			
Maintenance of Way and Structures	81,053.06	112,988.32	31,935.26
Maintenance of Equipment	92,283.69	123,596.26	31,312.57
Power	137,759.83	161,178.40	23,418.57
Conducting Transportation	295,593.11	322,780.17	27,187.06
Traffic Expense	3,430.12	4,043.42	613.30
General Expense	219,645.86	221,394.61	1,748.75
	829,765.67	945,981.18	116,215.51
<i>Taxes</i>	170,234.12	192,075.07	21,840.95
<i>Total Expenses and Taxes</i>	999,999.79	1,138,056.25	138,056.46
<i>Gross Income</i>	D74,223.45	49,842.38	124,065.83
<i>Fixed Charges and Etc.</i>			
Rentals	21,811.32	39,566.11	17,754.79
Interest on Funded Debt	962,550.00	962,550.00
Interest on Unfounded Debt	734,135.95	771,315.17	37,179.22
Miscellaneous	14,461.73	14,127.45	D 334.28
<i>Total Fixed Charges</i>	1,732,959.00	1,787,558.73	54,599.73
<i>Net Corporate Deficit Profit and Loss Adjust- ments</i>	D 1,807,182.45	D 1,737,716.35	69,466.10
	Dr. 199,358.46	Cr. 2,703.93	202,062.39
<i>Net Decrease in Profit and Loss</i>	<u>D\$2,006,540.91</u>	<u>D\$1,735,012.42</u>	<u>\$271,528.49</u>

SIGNIFICANT OPERATIVE STATISTICS

Number of Passenger fares Collected	6,282,885	7,627,085	1,344,200
Number of Passenger Car Miles	1,723,889	2,094,645	371,156
Number of Revenue Car Miles	1,773,800	2,182,922	409,122
Tons of Freight Carried	47,868	78,806	30,938
Number of Freight Ton Miles	618,439	978,632	360,193
Per Cent of Operating Expenses to Operating Revenue	90.96%	80.78%	D 10.18%

D—Denotes Deficit or Decrease.

Under date of March 21, 1922, George O. Redington, Counsel to the Commission, successor to Mr. Kingsbury also made a report to Commissioner Harkness regarding this case as follows:

Several days ago you requested that, in connection with Mr. Lindars, I review the conclusions reached by Colonel Kingsbury appearing in his report of July 11, 1921, and to learn if there had been any improvement in the financial condition of the New York, Westchester & Boston Railway Company, or such financial improvement as to change the conclusions reached by Colonel Kingsbury.

This is to say that I concur in the conclusions reached by Mr. Lindars as summarized in the last paragraph of his memorandum to you of March 16, 1922, reading as follows:

"Taking all of these facts into consideration, it is my opinion that the conclusions reached by Colonel Kingsbury are sound and just and apply to day with the same force as they did at the date the report was written, namely, July 11, 1921."

If the Transit Commission in its final action authorizes an increase of fare from five to seven cents, and the matter becomes public, it should of course be made clear that this road is not to be included in the Plan and has no connection with it; also that if it was a road that could come within our consolidated system a five cent fare would doubtless be sufficient.

The order entered is as follows:

ORDER ALLOWING PROPOSED INCREASE IN RATES.

The New York, Westchester & Boston Railway Company having on October 20, 1919, filed with the Public Service Commission, First District, a new Local Passenger Tariff, P. S. C., 1 N. Y., No. 18, designated as "Local Passenger Tariff of One Way and Commutation Fares applying in Both Directions and Special Train Rates Applying in Both Directions between Harlem River, N. Y., New Rochelle (North Avenue), N. Y., White Plains (Westchester Avenue), N. Y., and Intermediate Baggage Stations as Shown Herein," issued October 18, 1919, which passenger tariff purports to cancel P. S. C., 1 N. Y., No. 17, and provides and sets forth certain changes in the schedule now in force and in the rates now being charged by the said company on the route or routes over which the service is now being operated by it in the Borough of The Bronx, City and State of New York and increases from five to seven cents the fare between stations in this district, said charges to become effective on and after November 19, 1919; and the said Commission having by order dated October 31,

1919, directed a hearing for the purpose of inquiring into and determining the lawfulness and propriety of the proposed changes in said schedule and suspended the operation of said schedule until December 1, 1919; and the operation of said schedule having been further suspended by subsequent orders entered from time to time until the annulment thereof; and a hearing having been duly held and the said Commission by order dated January 30, 1920, having disallowed the proposed increase from five to seven cents in the rates between stations within the First District and having annulled the items of said tariff schedule with reference to such rates and directed the said New York, Westchester & Boston Railway Company to indicate upon its schedule only such rates between said stations within the First District as were consistent with the terms of said order; and an application by said company for a re-hearing of said case having been denied by said Commission by order dated February 3, 1920; and the said orders of January 30, 1920, and February 3, 1920, having been reviewed upon a writ of certiorari allowed on February 5, 1920, and the Appellate Division in and for the First Judicial Department having by order dated July 2, 1920, sustained said writ of certiorari and annulled said determination of said Commission and referred the matter back to said Commission to determine the reasonableness of the fare of seven cents proposed to be charged by said New York, Westchester & Boston Railway Company; and said order of said Appellate Division having been affirmed by the Court of Appeals on February 21, 1921; and this case having been re-opened by said Commission by order dated July 27, 1920, and a further hearing directed; and such hearing having been closed on October 11, 1920; and this case having been again re-opened by said Commission by order dated April 5, 1921, and a further hearing directed; and jurisdiction herein having thereafter devolved upon the Transit Commission by virtue of the provisions of Chapter 134 of the Laws of 1921 as amended by Chapter 335 of the Laws of 1921; and a hearing having been held before this Commission on May 2, 1921, and continued on June 1, 1921, before Louis C. White, Counsel to this Commission, specially authorized to conduct such hearing by order dated May 31, 1921, and further continued before Howard Thayer Kingsbury, Counsel to this Commission, specially authorized to conduct such hearing by order dated June 16, 1921, and such hearing having been closed on July 29, 1921, George H. Stover, Esq., Assistant Counsel, attending on behalf of the Transit Commission, Ralph P. Buell, Esq., Counsel for the New York, Westchester & Boston Railway Company, attending on its behalf, and Joseph A. Devery, Esq., Assistant Corporation Counsel, attending on behalf of The City of New York; and the said Howard Thayer Kingsbury, Esq., having reported to this Commission the testimony taken before him together with the testimony heretofore taken herein and having made and filed his decision upon the whole of such testimony wherein he finds and decides that the present rate of fare of the New York, Westchester & Boston Railway Company between stations in the City of New York, to wit, five cents, is insufficient, and that the proposed increased rate, to wit, seven cents, is reasonable and should be allowed and recommends the entry of this order; and due deliberation and consideration having been had thereon; and it appearing to the Commission that the said rate of five cents between stations in The City of New York is insufficient and that the proposed rate of seven cents between such stations is reasonable and that this Commission, as successor to the Public Service Commission, First District, has been directed by the Appellate Division in and for the First Judicial Department, as affirmed by the Court of Appeals, to determine the reasonableness of such proposed fare of seven cents

and to proceed with such determination with reasonable dispatch, it is

ORDERED

(1) That said increase from five to seven cents in the rates between stations in The City of New York be allowed and that the same be and hereby is fixed as the maximum rate, fare and charge between the stations to be observed by the said New York, Westchester & Boston Railway Company within The City of New York.

(2) That this order shall take effect immediately and shall continue in force until changed or abrogated by further order of the Commission.

(3) That permission be and the same hereby is granted to the New York, Westchester & Boston Railway Company to issue, file and put into effect on May 15, 1922, revised sheets to its Local Passenger Tariff schedule, identified as P. S. C.-1, N. Y. No. 18, issued October 18, 1919, showing the change from five to seven cents in its rates between stations within The City of New York; provided that for at least ten days before said schedule shall go into effect said company shall file and publish said revised schedule as required by law and shall post in each and every car operated by it in The City of New York a notice to the public announcing the date on which said change in fare from five to seven cents will take effect.

(4) That a certified copy of this order be served upon the New York, Westchester & Boston Railway Company in the manner provided by Section 23 of the Public Service Commission Law.

REPORT AND OPINION

KINGSBURY, Counsel: I, Howard Thayer Kingsbury, Counsel to the Transit Commission, to whom the above entitled case was referred by the Commission by order dated June 16, 1921, to conduct the hearing of such case, to take testimony in respect thereto and to report the same to the Commission, together with the testimony previously taken therein, with my decision upon the whole of such testimony, for the action of the Commission thereon, do hereby respectfully report as follows:

(1) I have conducted the continued hearing as directed by said order and have been attended thereon by George H. Stover, Esq., Assistant Counsel to the Transit Commission, R. P. Buell, Esq., Counsel for the New York, Westchester & Boston Railway Company and Joseph A. Devery, Esq., Assistant Corporation Counsel, for The City of New York. Said hearing was held on June 29, 1921, upon which date the testimony was closed. Thereafter briefs were filed and the case finally submitted upon such briefs on July 8, 1921. I return herewith the testimony taken before me together with the prior testimony taken herein and the exhibits admitted in evidence in connection therewith.

(2) This proceeding was begun before the Public Service

Commission in and for the First District, which by order dated October 31, 1919, directed a hearing for the purpose of inquiring into and determining the lawfulness and propriety of certain proposed changes in a Local Passenger Tariff applying in both directions between Harlem River, N. Y., New Rochelle (North Avenue) N. Y., White Plains (Westchester Avenue) N. Y. and intermediate baggage stations, issued October 18, 1919, and filed with said Public Service Commission, First District, on October 20, 1919, to become effective on and after November 19, 1919. Said tariff provided for an increase of the rates between stations in The City of New York from five cents to seven cents.

(3) By orders of said Commission, said tariff was suspended pending the hearing of this case and until the annulment of the schedule. Such hearing was duly held, and said Commission, by order dated January 30, 1920, disallowed the proposed increase from five to seven cents in the rates between stations within the First District; annulled the items of said tariff schedule with reference to such rates and directed the said New York, Westchester & Boston Railway Company to indicate upon its schedules only such rates between stations within the First District as were consistent with the terms of said order. This order was made upon the ground expressly stated therein that said Commission had not been delegated with power to authorize an increase of said rates.

(4) By order dated February 3, 1920, an application made by the New York, Westchester & Boston Railway Company for a rehearing of said case was denied.

(5) Thereafter the New York, Westchester & Boston Railway Company applied to the Supreme Court of the State of New York for a writ of certiorari to review the determination of said Commission. Said writ was allowed on February 5, 1920. By order of Court dated February 24, 1920 The City of New York was permitted to intervene in the proceeding.

(6) Such proceedings were had upon said writ of certiorari that by order made by the Appellate Division in and for the First Judicial Department dated July 2, 1920, and entered July 13, 1920, said writ was sustained and said determination of said Commission was annulled and the matter was referred back to said Commission to determine the reasonableness of the fare of seven cents

proposed to be charged by said New York, Westchester & Boston Railway Company and the said Commission was directed to proceed with the consideration, action and determination of the matter with reasonable dispatch.

(7) By order of said Appellate Division dated October 15, 1920, the said Commission and The City of New York were granted leave to appeal to the Court of Appeals and two questions of law were certified thereto for determination as follows:

"1. Is the railroad of the New York, Westchester & Boston Railway Company a 'street railroad' within the meaning of Section 18 of Art. III of the Constitution of the State of New York?

"2. Even if said railroad is not a street railroad within the meaning of said constitutional provision, has the Public Service Commission for the First District the power to increase above the five cent maximum the rate of fare prescribed in the agreement between the City of New York and the Railroad Company?"

(8) On February 21, 1921, the Court of Appeals affirmed said order of the Appellate Division and answered the first question in the negative and the second in the affirmative. The remittitur of the Court of Appeals was duly filed and an order on such remittitur was entered on February 8, 1921. Copies of the printed Record in the Court of Appeals and of the order on remittitur are submitted herewith.

(9) After the said decision by the Appellate Division, the case was re-opened by the Public Service Commission, First District, and by order of July 27, 1920, a further hearing was directed. Such hearing was continued from time to time before said Commission and was closed on October 11, 1920. After the decision by the Court of Appeals the hearing was again re-opened and by order dated April 5, 1921 a further hearing was directed.

(10) By virtue of the provisions of Chapter 134 of the Laws of 1921 as amended by Chapter 335 of the Laws of 1921 the further hearing of this case devolved upon the Transit Commission. A hearing was held before the Transit Commission on May 2, 1921, and adjourned to June 1, 1921. By order dated May 31, 1921 Louis C. White, Esq., Counsel to the Transit Commission, was specially authorized to conduct such hearing and it was continued

before him on June 1, 1921. After the resignation of said Louis C. White, Esq., as Counsel to the Transit Commission, the undersigned was authorized to continue said hearing by order of the Transit Commission dated June 16, 1921.

(11) The decision of the Appellate Division as affirmed by the Court of Appeals constitutes the law of this case and is binding as an adjudication upon all parties hereto. The Public Service Commission was required thereby to determine the question presented herein and to take appropriate action thereon. The Transit Commission succeeds to all of the authority in the premises of the former Public Service Commission, First District, since the proceeding relates to the local transportation of persons and property within The City of New York over such portion of the lines of the New York, Westchester & Boston Railway Company as lies within said City.

(12) In the original opinion of Deputy and Acting Commissioner Glennon dated January 30, 1920, upon which the Public Service Commission's order of that date was made, it was in effect found as a fact that the five cent rate between stations in the City of New York was unreasonable to the company. In the opinion of the Appellate Division it was stated that "it is evident that the contemplated public service cannot be rendered at the rate of fare prescribed in the ordinance" of the City of New York, namely five cents. It thus appears that in the view both of the former Public Service Commission, First District, and of the court in which review was had upon certiorari, the present rate of five cents is inadequate and that some increase should therefore be allowed. This ruling is to be regarded as binding upon this Commission. This leaves for the Commission to determine merely whether the proposed rate of seven cents is reasonable.

(13) It appeared upon the former hearing that upon the then existing rates of fare the company "was not making sufficient to pay its operating expenses and taxes". When the case was re-opened after the decision by the Appellate Division, further evidence as to the results of operation were put in evidence showing the actual results down to June 30, 1920, with estimated results to December 31, 1920. When the case was again re-opened after the decision by the Court of Appeals, the figures showing the actual

results of operation were brought down to April 30, 1921. For the purpose of this decision, it is deemed sufficient to state the actual figures for the year 1920 and for the first four months of 1921. These figures are as follows:

1920—ACTUAL INCOME ACCOUNT

Gross Earnings	\$912,265.25
Operating Expenses	829,765.67
Net Operating Revenue	82,499.58
Taxes	170,234.12
Non-Operating Income	13,511.09
Deductions for Interest	1,696,685.95
Deductions for Rent, etc.	36,273.05
Deficit	\$1,807,182.45

JANUARY 1 TO APRIL 30, INCLUSIVE, 1921

Total Operating Revenue	324,913.25
Total Operating Expenses	291,632.80
Net Operating Revenue	33,280.45
Taxes	61,651.03
Deficit	28,370.58
Non-Operating Revenue	7,969.37
Deficit	20,401.21
Other Deductions	588,335.57
Total Deficit	\$608,736.78

The company's estimates for the year 1921 at the present rates of fare are as follows:

Operating Revenue	\$1,174,034.11
Operating Expense	886,397.98

Net Operating Revenue	\$ 287,636.13
Taxes	195,000.00
<hr/>	
Operating Income	\$ 92,636.13
Non-Operating Income	12,000.00
<hr/>	
Total Income	\$ 104,636.13
Deductions from Gross Income:	1,790,970.27
Rents	\$21,811.32
Interest on Funded Debt...	962,550.00
Interest on Unfunded Debt..	791,888.95
Miscellaneous Deductions ..	14,720.00
<hr/>	
Deficit	\$1,686,334.14
<hr/>	

The company's estimates for the year 1921 at the proposed rates of fare are as follows:

Operating Revenue	\$1,370,014.65
Operating Expense	886,397.98
<hr/>	
Net Operating Revenue	\$ 483,616.67
Taxes	195,000.00
<hr/>	
Operating Income	\$ 288,616.67
Non-Operating Income	12,000.00
<hr/>	
Total Income	\$ 300,616.67
Deductions from Income:	1,790,970.27
Rents	\$21,811.32
Interest on Funded Debt...	962,550.00
Interest on Unfunded Debt..	791,888.95
Miscellaneous Deductions ..	14,720.00
<hr/>	
Deficit	\$1,490,353.60
<hr/>	

Upon these figures, it is manifest that the present rates are inadequate and that even under the proposed rates, according to the

company's estimates, there will be only a small balance after payment of operating expenses and taxes applicable to the payment of interest on the company's indebtedness.

(14) It also appears from the evidence that the proposed rates are substantially lower than the rates charged for the corresponding distances on the Harlem Division of the New Haven Railroad and on the Harlem Division of the New York Central Railroad.

(15) It is contended by the Corporation Counsel that the company is over capitalized and that the proposed increase of rates should not be granted for this reason. It appears from the evidence that the original issues of the company's stock and bonds were approved by the Public Service Commission, Second District. Such approval is sufficient to establish the propriety of the capitalization, at least in the absence of direct evidence to the contrary. Moreover, the estimated return from the new rates will fall so far below the amount necessary to pay interest on the outstanding indebtedness of the company that the question of over capitalization is deemed immaterial upon the present hearing.

(16) The Corporation Counsel also contends that the increase in rates will drive passengers away and not increase the company's revenue. This is purely a matter of conjecture. So far as there is any evidence bearing on the subject, it preponderates the other way. In any event, if the result indicated by the Corporation Counsel should occur, it would be to the interest of the company to reduce the fare to its present figure and it may be assumed that in such matters self-interest will operate in its usual manner. The company will remain under the supervision of this Commission which may, of its own motion, take appropriate action at any time in the event of a change of conditions.

(17) The Corporation Counsel also contends that since the increase, upon the company's own figures, will not be sufficient to pay in full the interest on the indebtedness and thus prevent the deficit from continuing to increase, it should not be granted. This might be a reason for granting a higher increase but is not a reason why the increase asked should not be allowed.

(18) The Corporation Counsel also objects that the cost of carrying intra-city traffic has not been segregated. No such re-

quirement was suggested by the Courts which have passed upon the case, and it should not be imposed now. It is demonstrated that the Company needs an increase in rates all along the line. The intra-city traffic ought to bear its share of the general burden. That this increase within the City may assist the Company in obtaining an increase outside of the City is no reason for denying it here. The line is operated as a whole, and if both the mileage within the City and the number of passengers carried within the City are taken into consideration, the intra-city traffic constitutes a substantial portion of the whole. It is unnecessary in this case to determine whether or not, as a matter of law, the through rate may exceed the sum of the local fares. Upon the facts here presented, it would be manifestly unjust to carry the intra-city passenger for a smaller charge than is exacted from the passenger from Mount Vernon or New Rochelle for the same transportation.

(19) The actual results of operation for the year 1920 and for the first four months of 1921 and the company's estimates based thereon show some improvement over previous figures. Against this, however, there should be taken into consideration the fact that according to the decision of the Appellate Division the company was entitled to an increase of fares as of the date upon which its proposed tariff was to become effective. Nearly twenty months have elapsed since that date. During this period the company has been forced to operate under its former tariff, thus suffering a loss which cannot be made up to it in any way. The company should not be deprived of such advantages as it may reap from permission to establish a reasonable rate of fare now, because there has been some improvement in the results of its operation since its proposed increase in rates was disallowed by the former Public Service Commission, not upon the merits but upon an erroneous conception of its own powers since corrected by the Courts.

(20) Under the decision by the Courts, this Commission is required to act in the matter with reasonable dispatch, and is therefore not at liberty to defer action pending any general re-organization of the transit system in the City. Moreover, the New York, Westchester & Boston Railway Company is not a "street railroad" or a "rapid transit railroad", within the City, but is a railroad of which only a part is within the City. It is not a part of any of the City transit system. The "five cent fare policy" invoked by the

Corporation Counsel cannot override the express decision of the Court.

(21) For the foregoing reasons and upon the entire record of the hearing before me and of the prior hearings in this case, I find and decide that:

(1) The present rate of fare between stations in The City of New York of the New York, Westchester & Boston Railway Company, to wit, five cents, is insufficient.

(2) The increased rate of fare between stations in The City of New York proposed by the New York, Westchester & Boston Railway Company in its Local Passenger Tariff, identified as P. S. C.—1 N. Y.—No. 18, issued October 18, 1919, to wit, seven cents, is reasonable and should be allowed.

(3) The proposed Local Passenger Tariff of the New York, Westchester & Boston Railway Company identified as P. S. C.—1 N. Y.—No. 18, issued October 18, 1919, should be put into effect upon the shortest notice consistent with the rules and practice of the Transit Commission.

(22) I accordingly recommend that an order be entered in the form submitted herewith permitting the New York, Westchester & Boston Railway Company to put into effect its proposed Local Passenger Tariff, identified as P. S. C.—1 N. Y.—No. 18, issued October 18, 1919, upon the shortest notice consistent with the rules and practice of the Transit Commission.

All of which is respectfully submitted this 11th day of July, 1921.

In the Matter of the Hearing on the Motion of the Commission upon the regulation, practices, equipment, appliances and service of the Interborough Rapid Transit Company.

CASE No. 2627

Service and Facilities—Rapid Transit Railroad Company—Hearing Instituted on Motion of Commission—Months Devoted to General Investigation of Affairs of Transit Companies—Issue in Case.—This is a hearing instituted on motion of the Commission into the service and facilities of the Interborough Rapid Transit Company in the operation

of the subways and was ordered after months devoted to a general investigation of the affairs of the transit companies, and after extensive surveys of subway operation had been made and tabulated by the Commission's Transit Bureau. The issue in this case is not whether the service is inadequate. It concerns the extent to which an unquestionably inadequate service can and should be improved at this time.

Service and Facilities—Rapid Transit Railroad Company—Relief of Rush Hour Congestion—Commission's Plan for Transit Reorganization Involves Subway Construction to Extent of \$25,000,000 to \$50,000,000 Annually—New Lines Not to Come into Operation for Four or Five Years.—It must be recognized that rush-hour congestion can be fully relieved only by the construction of new subways. The Commission's plan for transit reorganization involves, through making the present investment of the City self-supporting, the setting aside of a revolving construction fund of between 250 and 300 million dollars. In this way subway construction to the extent of 25 to 50 million dollars annually can be financed, and new construction can somewhere near keep pace with traffic requirements. At the best, however, these new lines cannot come into operation for four or five years.

Service and Facilities—Rapid Transit Railroad Company—Traffic Counts Indicate Heavy and Unnecessary Overcrowding—Service During Rush Hours—Non-Rush Hour Service—Ample Equipment for Relief During Non-Rush Hours—Number of Cars Not Sufficient to Spread Out the Rush Hour Service—Remedy Obviously More Cars.—The traffic counts made by Commission staff indicate exceedingly heavy and, in large part, unnecessary overcrowding. Although the service during rush hours is practically up to track capacity, there is no operating reason why immediate and substantial relief should not be given during non-rush hours. For non-rush hour service there is ample equipment. It is merely a matter of making greater use of existing facilities. In the rush hours, at the peak, the track capacity is very nearly, if not quite reached. The most that can be done at the height of the peak is possibly to put in a very limited number of additional trains. Toward the beginning and end of the rush periods material relief can be given by operating more trains. But with the number of cars the Company now has it is possible to supply the most intensive service only during the peak of the rush. At that time all the cars, except a few necessarily in the repair shops, are on the road, and the number is not sufficient to spread out the rush-hour service. The remedy for this, obviously, is the provision of more cars.

Service and Facilities—Rapid Transit Railroad Company—Deficiencies in Service Financial Problem Rather than Operating Problem—Settled Law that Commission May Not Impose Requirements, Cost of Which Would Amount to Confiscation of Company's Property—Evidence Shows, However, Existence of Substantial Sum Which Company May Be Required to Expend for Increased Service.—In the course of the proceeding it became apparent that the deficiencies in service were so great that the extent to which trains should be added would, from a practical point of view, become a financial problem rather than an operating problem. It is settled law that a regulatory commission, in the exercise of its regulatory powers over public service corporations, may not lawfully impose requirements, the cost of which would amount to confiscation of the company's property. After careful consideration of all the evidence offered in this proceeding, it became apparent that with the reduction in operating costs that has taken place during recent months, and with similar increase in revenues, there exists a very substantial sum which the Company may annually be required to expend for increased service, without violating the limitation of law referred to.

Additional Equipment—Rapid Transit Railroad Company—Company's Program for More Cars Impossible—Commission's Conclusion that Company Be Required to Order 350 Additional Cars—100 Cars to Be Ordered at Once—Remaining Cars to Be Ordered at Stated Intervals Later.—The need for additional equipment is admitted. The Company, in its initial proposal, introduced in evidence during the hearings, outlined a plan whereby 350 cars would be provided at various times during the next five years, the first lot of 50 not to be ordered until 1923. This program is impossible—it would mean, in effect, progressively increasing congestion. After carefully considering the schedule for the provision of additional equipment, the Commission has come to this conclusion: The Company should be required to order 350 additional cars, of these, 100 cars should be ordered at once, for delivery as soon as possible. It should order 50 more cars on the 1st of August next, for delivery as soon thereafter as possible. It should order the balance of 200 cars at a date not later than six months after the delivery of the contracts for the construction of the Jerome Avenue yard, the 180th Street yard and the 148th Street yards and shops.

Service and Facilities—Rapid Transit Railroad Company—Trained Men Unavailable for Proposed Increased Service—Commission Will Not Consider Subjecting Travelling Public to Risk Incident to Untrained Crews—Proposed Service Will Require Additional Force Approximating 600 Men—Possible to Get Only 300 Additional Trained Men at the Present Time—Necessary, Therefore, to Put in Effect Increased Service in Two Stages.—There is finally, one other point that needs consideration in connection with the provision of the increased service. The amount of increased service the Commission proposes to order is so substantial that the trained men now available will not be sufficient for operating the cars and for switching. It goes without saying that the Commission will not consider for a moment subjecting the travelling public to any risk incident to untrained crews. To carry out the schedule based on the headway the Commission proposes ordering will require an additional force of approximately 600 men. Even exhausting all the present reserves, it is possible to get at this time only 300 additional men. It is therefore necessary to put into effect the increased service in two stages: the first, as soon as necessary operating schedules can be prepared, that will exhaust the available trained personnel; and the second as soon as the necessary additional men can be trained.

Service and Facilities—Rapid Transit Railroad Company—Conclusion—Preparation of Necessary Schedules and Putting in Force Thereof—Immediate Additional Service Will Provide Approximately 8 Million Additional Car Miles or Four Hundred Million Additional Car Seat Miles Per Year—Detailed Schedule for Full Service Requirements Under Headways Deemed Necessary by Commission to Go into Effect Not Later than September 18, 1922.—The conclusion, therefore, is that the Company be ordered to prepare the necessary schedules and to put in force on May 31st next an operating schedule based upon prescribed headways which will exhaust all the available operating personnel. This immediate additional service, which is the utmost practicable at this time, is very substantial in amount. It will provide approximately eight million additional car miles, or four hundred million additional car seat miles per year. The Company further, should be ordered to train the additional men necessary to operate the full service requirements under the headways deemed necessary by the Commission. It should submit detailed schedules therefor on or before August 15th, and put such schedules, with any modifications ordered by the Commission, into effect on Monday, September 18th.

Hearings closed April 12, 1922. Opinions approved and Orders adopted May 2, 1922.

This proceeding was upon motion of the Commission to the end that it might determine whether the regulations, practices, equipment, appliances or service of the Interborough Rapid Transit Company in respect to transportation of persons or property in the City of New York were unjust, unreasonable, insufficient, improper or inadequate and to determine the just, reasonable, safe, adequate and proper regulations, practices, equipment, appliances and service thereafter to be in force, to be observed and to be used in such transportation of persons or property and to fix and prescribe the same by order to be made by the Commission and served upon the Interborough Company.

The hearing order in the Case was adopted March 7, 1922 and the first hearing in the matter directed to be held on March 15, 1922. Numerous hearings were held in connection with this investigation and an exhaustive inquiry had as to the character of service rendered by the Interborough Company and the additional requirements thereof for immediate and future improvement for the transportation of its patrons upon its line. The hearings were closed on April 12, 1922 and in about two weeks thereafter Orders "A" and "B" following and the opinions below were adopted and approved, respectively. The Orders have been accepted by the Interborough Rapid Transit Company.

In connection with the Orders in this Case, Chairman McAneny made the following statement on the date of the adoption thereof, summarizing in brief paragraphs the matter of the investigation and the effect of the orders toward an improvement of service on the lines of the Interborough Company.

1. The investigation preceding the issuance of the Interborough Service Orders has been the most thorough ever made since the opening of the first subway in 1904.
2. The Commission at a session held late this afternoon, adopted two separate orders, one providing for an immediate increase in both train and car facilities, to be effective on May 31st, and a materially greater increase to be effective September 18th; the other, directing the placing of orders for 350 new steel cars.
3. Under the May schedule 246 additional trains will be operated during each 24 hours, while through the lengthening of many trains, there will be an increase of the number of cars in service of 2,014 per day.
4. The September schedule will add a further increase of 114 trains a day, making a total increase of 360 over the present operation, and increasing the total trains operated from 2,773 to 3,133.
5. The estimates of the engineers of the Commission show that under the May schedule alone there will be an increase of

approximately 8,000,000 car miles,—or 400,000,000 car seat miles,—per annum. The immediate increase per day in car miles will be 20,935, and in car seat miles 1,046,750.

6. To operate the May schedule will require the employment of the full force of reserve crews now in the service of the company, numbering 300 men. The September schedule will require a further increase of 300, who are to be employed and trained for service during the summer months.
7. The Equipment Order directs the company to proceed with the order for the first 100 of the total of 350 cars immediately, and their delivery as soon as it is possible for the manufacturers to turn them out. On August 1st the company is directed to place a further order for 50 cars to be delivered as soon thereafter as possible, and the final order for 200 must be placed within six months after the contracts for the construction work remaining to be done on the Jerome Avenue and the 180th Street yards and the 148th Street yard and shops have been finally approved and are ready for delivery.
8. The following are instances of the increases, in terms of percentage, at various hours:

West Side Express South-Bound

6:00—7:00 a. m.	5%
8:00—9:00 “	6%
9:00—10:00 “	3%

(Note: These are additions made to rush-hour service, and mean operation practically to track capacity.)

10:00—11:00 a. m.	11%
11:00—12:00 noon	19%
12:00 m.—2:00 p. m.	26%
2:00—3:00 p. m.	15%
3:00—6:00 “	average of 5%
7:00—8:00 “	16%
8:00—9:00 “	27%
9:00—10:00 “	18%
10:00—11:00 “	12%

West Side Express North-Bound

7:00—9:00 a. m.	Rush-hour service increased 4%
12:00—1:00 p. m.	14%
1:00—2:00 “	26%
2:00—3:00 “	32%
3:00—4:00 “	16%
4:00—5:00 “	15%
5:00—6:00 “	10%
6:00—7:00 “	7%
8:00—9:00 “	15%
9:00—10:00 “	20%
10:00—11:00 “	15%
11:00—12:00 “	41%

West Side Locals South-Bound

7:00 a. m.—3:00 p. m.	13%
3:00—4:00 p. m.	31%
4:00—5:00 “	8%

TRANSIT COMMISSION

West Side Locals North-Bound

7:00—9:00 a. m.	(Rush hours) Average of about 6%
11:00 a. m.—1:00 noon	13%
1:00—2:00 p. m.	20%
2:00—4:00 "	13%
4:00—5:00 "	28%
10:00—12:00 "	11%

East Side South-Bound Express

9:00—10:00 a. m.	30%
10:00—11:00 "	5%
11:00—12:00 noon	15%
12:00—1:00 p. m.	26%
2:00—3:00 "	32%
3:00—4:00 "	9%
4:00—5:00 "	11%
7:00—8:00 "	17%
8:00—9:00 "	29%
9:00—11:00 "	23%
11:00—12:00 "	10%

East Side Express North-Bound

9:00—10:00 a. m.	7%
10:00—11:00 "	21%
11:00 a. m.—12:00 noon	20%
12:00 noon—1:00 p. m.	23%
1:00—2:00 p. m.	24%
2:00—3:00 "	30%
3:00—4:00 "	19%
7:00—8:00 "	16%
8:00—9:00 "	21%
9:00—10:00 "	29%
10:00—12:00 "	23%

East Side Locals South-Bound

9:00—10:00 a. m.	21%
10:00—11:00 "	13%
11:00 a. m.—12:00 noon	20%
12:00 noon—3:00 p. m.	13%
3:00—4:00 p. m.	23%
5:00—6:00 "	13%
7:00—9:00 "	50%
9:00—10:00 "	11%
10:00—11:00 "	25%
11:00—12:00 "	12%

East Side Locals North-Bound

6:00—7:00 a. m.	28%
10:00—11:00 "	28%
11:00—3:00 p. m.	13%
3:00—4:00 "	25%
4:00—5:00 "	15%
5:00—6:00 "	7%

7:00—8:00	"	12%
8:00—9:00	"	60%
9:00—10:00	"	37%
10:00—11:00	"	25%
11:00—12:00	"	11%

9. Under the sequence the orders are to take, the company will be required practically to exhaust its present man force on May 31st, and in September to further extend toward a maximum the use of its present equipment. When the new cars have been provided, a third stage will be reached when still greater improvement, including material extension of the rush hour service, will be brought about.
10. During the summer months traffic on the Interborough lines always falls off. The increased comfort and convenience in travel under the May schedules will therefore be felt more effectively, and by the middle of September, when the further orders take effect, the company will be better enabled to meet the largely increased traffic that immediately follows the vacation period and that holds good through the fall and winter.
11. The September schedules are based upon the operation of trains on a 3 minute interval during the midday non-rush hours, against the present average of something over 4 minutes, while a considerable measure of relief is also given the rush hours. With the company's present equipment and the present working force, including the reserves who are to be drafted on May 31st, it will not be possible to operate 3 minute non-rush-hour trains. The intermediate schedule provides, therefore, for 3½ minute intervals in the middle of the day, through with material additions in the other hours before and after the morning and evening rush.
12. The work upon the yards, the completion of which will from now on afford the key for the final and in some respects the most important extensions of service to be made, is to be pressed by the Commission as rapidly as the incidental contracts are approved by the Board of Estimate and Apportionment. Pending the completion of the building of these new yards, however, the company, under the supervision of the Commission's engineers, will provide temporary yard facilities and inspection sheds for that part of the increased service, possibly the full 150 cars included in the first orders, that can be taken care of without awaiting completion of the permanent yards.
13. The company is required to submit within twenty days the detailed schedules covering all divisions that are to become effective on May 31st, and to submit by August 15th the schedules to be effective September 18th.
14. At the time of each submission, separate schedules covering Saturdays, Sundays and legal holidays are to be presented, following in principle the weekday headways.

The Orders adopted were as follows:

SERVICE ORDER "A"

The Commission having by Order adopted on March 7, 1922, directed that a hearing be held, to the end that the Commission

might determine whether the regulations, practices, equipment, appliances or service of the Interborough Rapid Transit Company in respect to transportation of persons or property in the City of New York are unjust, unreasonable, unsafe, improper or inadequate, and to determine the just, reasonable, safe, adequate and proper regulations, practices, equipment, appliances and service thereafter to be in force, to be observed and to be used in such transportation of persons and property and to fix and prescribe the same by order to be made by the Transit Commission and served upon said Interborough Rapid Transit Company; and hearings having been duly held, and the said Interborough Rapid Transit Company and The City of New York and the Transit Commission having appeared at said hearings by counsel; and the Commission having duly considered the evidence adduced before it at the aforesaid hearings and being of the opinion that the regulations, practices and service of said Interborough Rapid Transit Company in respect to the transportation of persons or property within the City of New York are unjust, unreasonable, improper and inadequate, and that the regulations, practices and services, hereinafter specified, are necessary in order to provide more adequate service for the public and ought hereafter and until further order of the Commission to be in force and to be observed and used by said company in the transportation of persons or property, and are reasonable to the said company in view of its equipment and financial condition; and the Commission having determined that the regulations, practices and service, hereinafter specified, are just, proper and reasonable in view of the equipment available and the present financial condition of the company, it is

Ordered: that the Interborough Rapid Transit Company:

(1) Operate daily except Saturdays, Sundays and legal holidays, on and after September 18th, 1922, on the lines or divisions past the stations in the directions, during the periods, at the times and at the headways hereinafter specified, the following trains, with a sufficient number of cars per train to conform to the traffic requirements:

(a) From the Bronx Park and 242nd Street Stations in the Bronx, the 215th Street, Dyckman Street and 137th Street Stations in upper Manhattan, as the case may be, on the Broadway-7th Avenue Subway Line, express divisions, southbound past the 96th Street Station, to the Pennsylvania Avenue, Utica Avenue, Flatbush Avenue and Atlantic Avenue Stations in Brooklyn and the South Ferry Station in lower Manhattan, as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
6:12 a. m. to 7:00 a. m.	19	2' 40"
7:00 a. m. to 8:00 a. m.	31	1' 56"
8:00 a. m. to 9:00 a. m.	34	1' 46"
9:00 a. m. to 10:00 a. m.	25	2' 24"
10:00 a. m. to 11:00 a. m.	20	3'
11:00 a. m. to 12:00 noon	20	3'
12:00 noon to 1:00 p. m.	20	3'
1:00 p. m. to 2:00 p. m.	20	3'
2:00 p. m. to 3:00 p. m.	20	3'

From 3:00 P. M. for the remainder of the said express service, the southbound number of trains and average headways are deter-

mined by the number of trains and average headways as set forth northbound past 96th Street Station in (b) following.

(b) From the Pennsylvania Avenue, Utica Avenue, Flatbush Avenue and Atlantic Avenue Stations in Brooklyn, and the South Ferry Station in lower Manhattan, as the case may be, on the Broadway-7th Avenue Subway Line, express division, northbound past the 96th Street Station, to the Bronx Park and the 242nd Street Stations in the Bronx, and the 215th Street, Dyckman Street and 137th Street Stations in upper Manhattan as the case may be.

From the beginning of the following express service in the morning to 1:00 P. M., the northbound number of trains and average headways are determined by the number of trains and average headways as set forth southbound past 96th Street Station in (a) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
1:00 p. m. to 2:00 p. m.	20	3'
2:00 p. m. to 3:00 p. m.	20	3'
3:00 p. m. to 4:00 p. m.	20	3'
4:00 p. m. to 5:00 p. m.	22	2' 44"
5:00 p. m. to 6:00 p. m.	33	1' 49"
6:00 p. m. to 7:00 p. m.	31	1' 56"
7:00 p. m. to 8:00 p. m.	24	2' 30"
8:00 p. m. to 9:00 p. m.	20	3'
9:00 p. m. to 10:00 p. m.	17	3' 32"
10:00 p. m. to 11:00 p. m.	15	4'
11:00 p. m. to 12:00 m. n.	18	3' 20"
12:00 m. n. to 1:00 a. m.	12	5'
1:00 a. m. to 1:40 a. m.	7	5' 43"

259

(c) From the Bronx Park and the 242nd Street Stations in the Bronx, the 145th Street and Lenox Avenue, Dyckman Street and 137th Street and Broadway Stations in upper Manhattan, as the case may be, on the Broadway-7th Avenue Subway Line, local division, southbound past 59th Street Station, to the Pennsylvania Avenue and Flatbush Avenue Stations in Brooklyn, and the South Ferry Station in lower Manhattan, as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
6:00 a. m. to 7:00 a. m.	13	4' 37"
7:00 a. m. to 8:00 a. m.	16	3' 45"
8:00 a. m. to 9:00 a. m.	24	2' 30"
9:00 a. m. to 10:00 a. m.	20	3'
10:00 a. m. to 11:00 a. m.	20	3'
11:00 a. m. to 12:00 noon	20	3'
12:00 noon to 1:00 p. m.	20	3'
1:00 p. m. to 2:00 p. m.	20	3'
2:00 p. m. to 3:00 p. m.	20	3'

173

From 3:00 P. M. for the remainder of the twenty-four hours on the said local service, the southbound number of trains, and the average headways are determined by the number of trains and average headways as set forth, northbound past 50th Street Station, in (d) following.

(d) From the Pennsylvania Avenue and Flatbush Avenue Stations in Brooklyn and the South Ferry Station in lower Manhattan, as the case may be, on the Broadway-7th Avenue Subway

Line, local division, northbound past the 50th Street Station, to the Bronx Park and the 242nd Street Stations in the Bronx, and the 145th Street and Lenox Avenue, Dyckman Street and 137th Street and Broadway Stations in upper Manhattan, as the case may be.

From the beginning of the following local service in the morning to 2:00 P. M., the northbound number of trains and average headways are determined by the number of trains and average headways as set forth southbound past 59th Street Station in (c) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p. m. to 3:00 p. m.	20	3'
3:00 p. m. to 4:00 p. m.	20	3'
4:00 p. m. to 5:00 p. m.	22	2' 44"
5:00 p. m. to 6:00 p. m.	25	2' 34"
6:00 p. m. to 7:00 p. m.	22	2' 44"
7:00 p. m. to 8:00 p. m.	17	3' 32"
8:00 p. m. to 9:00 p. m.	15	4'
9:00 p. m. to 10:00 p. m.	15	4'
10:00 p. m. to 11:00 p. m.	15	4'
11:00 p. m. to 12:00 m. n.	16	3' 45"
12:00 m. n. to 1:00 a. m.	12	5'
1:00 a. m. to 2:00 a. m.	12	5'
2:00 a. m. to 3:00 a. m.	10	6'
3:00 a. m. to 4:00 a. m.	10	6'
4:00 a. m. to 5:00 a. m.	10	6'
5:00 a. m. to 6:00 a. m.	10	6'

251

(e) From the 180th Street East, Bronx Park, Kingsbridge Road, 241st Street and White Plains Avenue, and the 149th Street Stations in the Bronx, as the case may be, on the Lexington-4th Avenue Subway Line, express division, southbound past the Grand Central Station, to the Atlantic Avenue Station in Brooklyn, and the South Ferry Station in lower Manhattan as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
6:15 a. m. to 7:00 a. m.	12	3' 45"
7:00 a. m. to 8:00 a. m.	30	2'
8:00 a. m. to 9:00 a. m.	30	2'
9:00 a. m. to 10:00 a. m.	25	2' 24"
10:00 a. m. to 11:00 a. m.	20	3'
11:00 a. m. to 12:00 noon	20	3'
12:00 noon to 1:00 p. m.	20	3'
1:00 p. m. to 2:00 p. m.	20	3'
2:00 p. m. to 3:00 p. m.	20	3'

197

From 3:00 P. M. for the remainder of the said express service, the southbound number of trains and average headways are determined by the number of trains and average headways as set forth northbound past the Grand Central Station in (f) following.

(f) From the Atlantic Avenue Station in Brooklyn, and the South Ferry Station in lower Manhattan, as the case may be, on the Lexington-4th Avenue Subway Line, express division, northbound past the Grand Central Station, to the 180th Street East, Bronx Park, Kingsbridge Road, 241st Street and White Plains Avenue and the 149th Street Stations in the Bronx, as the case may be.

From the beginning of the following express service in the morning to 2:00 P. M., the northbound number of trains and average headways are determined by the number of trains and average headways as set forth southbound past the Grand Central Station in (e) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p. m. to 3:00 p. m.	20	3'
3:00 p. m. to 4:00 p. m.	20	3'
4:00 p. m. to 5:00 p. m.	20	3'
5:00 p. m. to 6:00 p. m.	30	2'
6:00 p. m. to 7:00 p. m.	30	2'
7:00 p. m. to 8:00 p. m.	21	2' 51"
8:00 p. m. to 9:00 p. m.	15	4'
9:00 p. m. to 10:00 p. m.	15	4'
10:00 p. m. to 11:00 p. m.	15	4'
11:00 p. m. to 12:00 m. n.	15	4'
12:00 m. n. to 1:00 a. m.	12	5'
1:00 a. m. to 1:40 a. m.	8	5'

221

(g) From the Kingsbridge Road, Hunts Point Avenue, Pelham Bay Parkway, and 138th Street Stations in the Bronx, as the case may be, on the Lexington-4th Avenue Subway Line, local division, southbound past the 33rd Street Station, to the Atlantic Avenue Station in Brooklyn, and the City Hall Station in lower Manhattan, as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
6:00 a. m. to 7:00 a. m.	8	7' 30"
7:00 a. m. to 8:00 a. m.	18	3' 20"
8:00 a. m. to 9:00 a. m.	29	2' 04"
9:00 a. m. to 10:00 a. m.	18	3' 20"
10:00 a. m. to 11:00 a. m.	20	3'
11:00 a. m. to 12:00 noon	20	3'
12:00 noon to 1:00 p. m.	20	3'
1:00 p. m. to 2:00 p. m.	20	3'
2:00 p. m. to 3:00 p. m.	20	3'

173

From 3:00 P. M. for the remainder of the twenty-four hours on the said local service, the southbound number of trains and average headways are determined by the number of trains and average headways as set forth northbound past the 33rd Street Station in (h) following.

(h) From the Atlantic Avenue Station in Brooklyn and the City Hall Station, in lower Manhattan, as the case may be, on the Lexington-4th Avenue Subway Line, local division, northbound past the 33rd Street Station, to the Kingsbridge Road, Hunts Point Avenue, Pelham Bay Parkway and 138th Street Stations in the Bronx, as the case may be.

From the beginning of the following local service in the morning to 2:00 P. M., the northbound number of trains and average headways are determined by the number of trains and average headways as set forth southbound past the 33rd Street Station in (g) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p. m. to 3:00 p. m.	20	3'
3:00 p. m. to 4:00 p. m.	20	3'
4:00 p. m. to 5:00 p. m.	23	2' 36"
5:00 p. m. to 6:00 p. m.	30	2'
6:00 p. m. to 7:00 p. m.	20	3'
7:00 p. m. to 8:00 p. m.	15	4'
8:00 p. m. to 9:00 p. m.	12	5'
9:00 p. m. to 10:00 p. m.	12	5'
10:00 p. m. to 11:00 p. m.	12	5'
11:00 p. m. to 12:00 m. n.	10	6'
12:00 m. n. to 1:00 a. m.	10	6'
1:00 a. m. to 2:00 a. m.	8	7' 30"
2:00 a. m. to 3:00 a. m.	8	7' 30"
3:00 a. m. to 4:00 a. m.	8	7' 30"
4:00 a. m. to 5:00 a. m.	8	7' 30"
5:00 a. m. to 6:00 a. m.	8	7' 30"
<hr/>		
224		

(i) *On the Queensborough Subway Line:*
Leaving Grand Central Station for Alburty Avenue Station

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
12:00 m. n. to 1:00 a. m.	3	20'
1:00 a. m. to 2:00 a. m.	3	20'
2:00 a. m. to 3:00 a. m.	3	20'
3:00 a. m. to 4:00 a. m.	3	20'
4:00 a. m. to 5:00 a. m.	3	20'
5:00 a. m. to 6:00 a. m.	3	20'
6:00 a. m. to 7:00 a. m.	4	15'
7:00 a. m. to 8:00 a. m.	7	8' 30"
8:00 a. m. to 9:00 a. m.	8	7' 30"
9:00 a. m. to 10:00 a. m.	6	10'
10:00 a. m. to 11:00 a. m.	5	12'
11:00 a. m. to 12:00 noon	4	15'
12:00 noon to 1:00 p. m.	4	15'
1:00 p. m. to 2:00 p. m.	3	20'
2:00 p. m. to 3:00 p. m.	4	15'
3:00 p. m. to 4:00 p. m.	4	15'
4:00 p. m. to 5:00 p. m.	6	10'
5:00 p. m. to 6:00 p. m.	7	8' 30"
6:00 p. m. to 7:00 p. m.	6	10'
7:00 p. m. to 8:00 p. m.	5	12'
8:00 p. m. to 9:00 p. m.	3	20'
9:00 p. m. to 10:00 p. m.	4	15'
10:00 p. m. to 11:00 p. m.	4	15'
11:00 p. m. to 12:00 m. n.	4	15'

(j) *On the Queensborough Subway Line:*
Leaving Grand Central Station for Ditmars Avenue Station

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
12:00 m. n. to 1:00 a. m.	3	20'
1:00 a. m. to 2:00 a. m.	3	20'
2:00 a. m. to 3:00 a. m.	3	20'
3:00 a. m. to 4:00 a. m.	3	20'
4:00 a. m. to 5:00 a. m.	3	20'
5:00 a. m. to 6:00 a. m.	3	20'
6:00 a. m. to 7:00 a. m.	4	15'

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
7:00 a. m. to 8:00 a. m.	8	7' 30"
8:00 a. m. to 9:00 a. m.	7	8' 30"
9:00 a. m. to 10:00 a. m.	6	10'
10:00 a. m. to 11:00 a. m.	5	12'
11:00 a. m. to 12:00 noon	4	15'
12:00 noon to 1:00 p. m.	4	15'
1:00 p. m. to 2:00 p. m.	4	15'
2:00 p. m. to 3:00 p. m.	4	15'
3:00 p. m. to 4:00 p. m.	3	20'
4:00 p. m. to 5:00 p. m.	5	12'
5:00 p. m. to 6:00 p. m.	8	7' 30"
6:00 p. m. to 7:00 p. m.	6	10'
7:00 p. m. to 8:00 p. m.	4	15'
8:00 p. m. to 9:00 p. m.	4	15'
9:00 p. m. to 10:00 p. m.	4	15'
10:00 p. m. to 11:00 p. m.	3	20'
11:00 p. m. to 12:00 m. n.	4	15'

(2) On or before August 15th, 1922, the Interborough Rapid Transit Company shall make and file with the Transit Commission, full and complete train schedules showing in detail the operation in accordance with the above prescribed number of trains, intervals between trains and cars per train. Thereafter the Commission may make changes or modifications in the schedules so filed and after its approval the Commission will issue such schedules to the Interborough Rapid Transit Company and on September 18th, 1922, the date heretofore provided for, the said company shall furnish and operate service on its lines, pursuant to said schedules.

(3) Pending the proper training of sufficient additional motor-men and other employees for the safe operation of the foregoing schedules, effective September 18th, 1922, and for an initial improvement of the existing service, the Interborough Rapid Transit Company is hereby ordered to operate on and after May 31st, 1922, until September 18th, 1922, daily, except Saturdays, Sundays and legal holidays, on the lines or divisions past the stations in the directions, during the periods, at the times and at the headways hereinafter specified, the following trains, with a sufficient number of cars per train to conform to the traffic requirements:

(a) From the Bronx Park and the 242nd Street Stations in the Bronx, the 215th Street, Dyckman Street and 137th Street Stations in upper Manhattan, as the case may be, on the Broadway-7th Avenue Subway Line, express divisions, southbound past the 96th Street Station, to the Pennsylvania Avenue, Utica Avenue, Flatbush Avenue and Atlantic Avenue Stations in Brooklyn and the South Ferry Station in lower Manhattan, as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
6:12 a. m. to 7:00 a. m.	19	2' 51"
7:00 a. m. to 8:00 a. m. }	65	1' 51"
8:00 a. m. to 9:00 a. m. }		
9:00 a. m. to 10:00 a. m.	25	2' 24"
10:00 a. m. to 11:00 a. m.	19	3' 09"
11:00 a. m. to 12:00 noon	17	3' 32"
12:00 noon to 1:00 p. m.	17	3' 32"
1:00 p. m. to 2:00 p. m.	17	3' 32"
2:00 p. m. to 3:00 p. m.	17	3' 32"

From 3:00 P. M. for the remainder of the said express service, the southbound number of trains and average headways are determined by the number of trains and average headways as set forth northbound past 96th Street Station in (b) following.

(b) From the Pennsylvania Avenue, Utica Avenue, Flatbush Avenue, and Atlantic Avenue Stations in Brooklyn, and the South Ferry Station in lower Manhattan, as the case may be, on the Broadway-7th Avenue Subway Line, express division, northbound past the 96th Street Station, to the Bronx Park and the 242nd Street Stations in the Bronx, and the 215th Street, Dyckman Street and 137th Street Stations in upper Manhattan as the case may be.

From the beginning of the following express service in the morning to 1:00 P. M., the northbound number of trains and average headways are determined by the number of trains and average headways as set forth southbound past 96th Street Station in (a) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
1:00 p. m. to 2:00 p. m.	17	3' 32"
2:00 p. m. to 3:00 p. m.	17	3' 32"
3:00 p. m. to 4:00 p. m.	17	3' 32"
4:00 p. m. to 5:00 p. m.	22	2' 44"
5:00 p. m. to 6:00 p. m.	33	1' 49"
6:00 p. m. to 7:00 p. m.	31	1' 56"
7:00 p. m. to 8:00 p. m.	24	2' 30"
8:00 p. m. to 9:00 p. m.	20	3'
9:00 p. m. to 10:00 p. m.	17	3' 32"
10:00 p. m. to 11:00 p. m.	15	4'
11:00 p. m. to 12:00 m. n.	18	3' 20"
12:00 m. n. to 1:00 a. m.	12	5'
1:00 a. m. to 1:40 a. m.	7	5' 43"

250

(c) From the Bronx Park and the 242nd Street Stations in the Bronx, the 145th Street and Lenox Avenue, Dyckman Street and 137th Street and Broadway Stations in upper Manhattan, as the case may be, on the Broadway-7th Avenue Subway Line, local division, southbound past 59th Street Station, to the Pennsylvania Avenue and Flatbush Avenue Stations in Brooklyn, and the South Ferry Station in lower Manhattan as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
6:00 a. m. to 7:00 a. m.	13	4' 37"
7:00 a. m. to 8:00 a. m.	16	3' 45"
8:00 a. m. to 9:00 a. m.	24	2' 30"
9:00 a. m. to 10:00 a. m.	19	3' 09"
10:00 a. m. to 11:00 a. m.	17	3' 32"
11:00 a. m. to 12:00 noon	17	3' 32"
12:00 noon to 1:00 p. m.	17	3' 32"
1:00 p. m. to 2:00 p. m.	17	3' 32"
2:00 p. m. to 3:00 p. m.	18	3' 20"

158

From 3:00 P. M. for the remainder of the twenty-four hours on the said local service, the southbound number of trains, and the average headways are determined by the number of trains and average headways as set forth, northbound past 50th Street Station, in (d) following.

(d) From the Pennsylvania Avenue and Flatbush Avenue Stations in Brooklyn and the South Ferry Station in lower Manhattan, as the case may be, on the Broadway-7th Avenue Subway Line, local division, northbound past the 50th Street Station, to the Bronx Park and the 242nd Street Stations in the Bronx, and the 145th Street and Lenox Avenue, Dyckman Street and 137th Street and Broadway Stations in upper Manhattan, as the case may be.

From the beginning of the following local service in the morning to 2:00 P. M., the northbound number of trains and average headways are determined by the number of trains and average headways as set forth southbound past 59th Street Station in (d) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p. m. to 3:00 p. m.	17	3' 32"
3:00 p. m. to 4:00 p. m.	17	3' 32"
4:00 p. m. to 5:00 p. m.	22	2' 44"
5:00 p. m. to 6:00 p. m.	25	2' 24"
6:00 p. m. to 7:00 p. m.	22	2' 44"
7:00 p. m. to 8:00 p. m.	17	3' 32"
8:00 p. m. to 9:00 p. m.	15	4'
9:00 p. m. to 10:00 p. m.	15	4'
10:00 p. m. to 11:00 p. m.	15	4'
11:00 p. m. to 12:00 m. n.	16	3' 45"
12:00 m. n. to 1:00 a. m.	12	5'
1:00 a. m. to 2:00 a. m.	12	5'
2:00 a. m. to 3:00 a. m.	8	7' 30"
3:00 a. m. to 4:00 a. m.	8	7' 30"
4:00 a. m. to 5:00 a. m.	8	7' 30"
5:00 a. m. to 6:00 a. m.	8	7' 30"

237

(e) From the 180th Street East, Bronx Park, Kingsbridge Road, 241st Street and White Plains Avenue, and the 149th Street Stations in the Bronx, as the case may be, on the Lexington-4th Avenue Subway Line, express division, southbound past the Grand Central Station, to the Atlantic Avenue Station in Brooklyn, and the South Ferry Station in lower Manhattan as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
6:15 a. m. to 7:00 a. m.	12	3' 45"
7:00 a. m. to 8:00 a. m.	30	2'
8:00 a. m. to 9:00 a. m.	30	2'
9:00 a. m. to 10:00 a. m.	25	2' 24"
10:00 a. m. to 11:00 a. m.	19	3' 9"
11:00 a. m. to 12:00 noon	17	3' 32"
12:00 noon to 1:00 p. m.	17	3' 32"
1:00 p. m. to 2:00 p. m.	17	3' 32"
2:00 p. m. to 3:00 p. m.	18	3' 20"

185

From 3:00 P. M. for the remainder of the said express service, the southbound number of trains and average headways are determined by the number of trains and average headways as set forth northbound past the Grand Central Station in (f) following.

(f) From the Atlantic Avenue Station in Brooklyn, and the South Ferry Station in lower Manhattan, as the case may be, on the Lexington-4th Avenue Subway Line, express division, northbound past the Grand Central Station, to the 180th Street East,

Bronx Park, Kingsbridge Road, 241st Street and White Plains Avenue and the 149th Street Stations in the Bronx, as the case may be.

From the beginning of the following express service in the morning to 2:00 P. M., the northbound number of trains and average headways are determined by the number of trains and average headways as set forth southbound past the Grand Central Station in (e) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p. m. to 3:00 p. m.	17	3' 32"
3:00 p. m. to 4:00 p. m.	17	3' 32"
4:00 p. m. to 5:00 p. m.	20	3'
5:00 p. m. to 6:00 p. m.	30	2'
6:00 p. m. to 7:00 p. m.	30	2'
7:00 p. m. to 8:00 p. m.	21	2' 51"
8:00 p. m. to 9:00 p. m.	15	4'
9:00 p. m. to 10:00 p. m.	13	4' 37"
10:00 p. m. to 11:00 p. m.	12	5'
11:00 p. m. to 12:00 m. n.	12	5'
12:00 m. n. to 1:00 a. m.	12	5'
1:00 a. m. to 1:40 a. m.	8	5'

207

(g) From the Kingsbridge Road, Hunts Point Avenue, Pelham Bay Parkway, and 138th Street Stations in the Bronx, as the case may be, on the Lexington-4th Avenue Subway Line, local division, southbound past the 33rd Street Station, to the Atlantic Avenue Station in Brooklyn and the City Hall Station in lower Manhattan, as the case may be.

<i>Period of the Day</i>	<i>Number of Train</i>	<i>Average Headway</i>
6:00 a. m. to 7:00 a. m.	8	7' 30"
7:00 a. m. to 8:00 a. m.	18	3' 20"
8:00 a. m. to 9:00 a. m.	29	2' 04"
9:00 a. m. to 10:00 a. m.	18	3' 20"
10:00 a. m. to 11:00 a. m.	17	3' 32"
11:00 a. m. to 12:00 noon	17	3' 32"
12:00 noon to 1:00 p. m.	17	3' 32"
1:00 p. m. to 2:00 p. m.	18	3' 20"
2:00 p. m. to 3:00 p. m.	17	3' 32"

159

From 3:00 P. M. for the remainder of the twenty-four hours on the said local service, the southbound number of trains and average headways are determined by the number of trains and average headways as set forth northbound past the 33rd Street Station in (h) following.

(h) From the Atlantic Avenue Station in Brooklyn and the City Hall Station in lower Manhattan, as the case may be, on the Lexington-4th Avenue Subway Line, local division, northbound past the 33rd Street Station, to the Kingsbridge Road, Hunts Point Avenue, Pelham Bay Parkway, and 138th Street Stations in the Bronx, as the case may be.

From the beginning of the following local service in the morning to 2:00 P. M., the northbound number of trains and average headways are determined by the number of trains and average headways as set forth southbound past the 33rd Street Station in (g) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p. m. to 3:00 p. m.	17	3' 32"
3:00 p. m. to 4:00 p. m.	18	3' 20"
4:00 p. m. to 5:00 p. m.	23	2' 36"
5:00 p. m. to 6:00 p. m.	30	2'
6:00 p. m. to 7:00 p. m.	20	3'
7:00 p. m. to 8:00 p. m.	15	4'
8:00 p. m. to 9:00 p. m.	12	5'
9:00 p. m. to 10:00 p. m.	10	6'
10:00 p. m. to 11:00 p. m.	10	6'
11:00 p. m. to 12:00 m. n.	10	6'
12:00 m. n. to 1:00 a. m.	9	6' 40"
1:00 a. m. to 2:00 a. m.	6	10'
2:00 a. m. to 3:00 a. m.	6	10'
3:00 a. m. to 4:00 a. m.	6	10'
4:00 a. m. to 5:00 a. m.	6	10'
5:00 a. m. to 6:00 a. m.	6	10'

 204

(4) Within twenty (20) days after the service of the order, the Interborough Rapid Transit Company shall make and file with the Transit Commission, full and complete train schedules showing in detail the operation in accordance with the above prescribed number of trains, intervals between trains and cars per train. Thereupon the Commission may make changes or modifications in the schedules so filed and after its approval the Commission will issue such schedules to the Interborough Rapid Transit Company and on the date ordered, May 31st, 1922, the said company shall furnish and operate service on its lines pursuant to said schedules until September 18th, 1922.

(5) The service, and the number and headway of trains, and the number of cars in each train, which the company is required by this Order, or is or may be required by any other Order of this Commission, to provide and operate on each of such lines, each of which such schedules shall be signed and countersigned by the proper officers and agents of the company and shall show, as to and for each line:

- (a) the general route over which the operation of such line is to take place;
- (b) the terminals of such line;
- (c) the termini of each run of cars or trains on any part of such lines;
- (d) the specific times of the day and night when the cars or trains of each run shall be scheduled, respectively, to arrive at and depart from such termini;
- (e) the specific times of the day and night when the cars or trains of each run shall be scheduled, respectively, to arrive at and depart from the 96th Street Station, in the case of the express and local services on the Broadway-7th Avenue Line; and from the Grand Central Station, in the case of the express and local services on the Lexington-4th Avenue Line.

(6) Within twenty (20) days after the service of this order, the Interborough Rapid Transit Company shall make and file with the Transit Commission, full and complete train schedules showing the details herein required in connection with daily service, for service on Saturdays, Sundays and legal holidays, which service, after approval by the Transit Commission, shall become effective on May 31st, 1922, and continue until September 18th, 1922.

(7) On or before August 15th, 1922, the Interborough Rapid Transit Company shall make and file with the Transit Commission, full and complete train schedules showing the details herein required in connection with daily service, for the service on Saturdays, Sundays and legal holidays, which service, after approval by the Transit Commission, shall become effective on September 18th, 1922.

(8) The Interborough Rapid Transit Company may apply to the Commission on or before the first Thursday of each month, or at other times if sufficient cause be shown, for further changes in or modifications of any existing schedule due to variations in traffic, and thereupon the Commission may make such changes or modifications in the schedules as it deems necessary or justified.

(9) Failure to operate cars and trains and maintain service according to the requirements of this Order and of the schedules at the time on file and in force hereunder shall not be deemed a violation of this Order if the Commission, upon a hearing, finds and determines that such failure was due to causes beyond the control of the company and not in any respect due to its negligence or fault. Upon any hearing held by the Commission pursuant to this paragraph the burden shall be upon the company to show that its failure to operate cars and trains and maintain service according to the requirements of this order and of the schedules at the time on file and in force hereunder was due to causes beyond its control and not in any respect due to its negligence or fault. If the Commission does not so find or determine, or if the company on such a hearing offers no evidence, the failure shall be deemed a violation of this Order.

(10) The making and entry of this Order, and anything done hereunder, shall be without prejudice to any other or further Order in this case or in respect of the subject-matter hereof or of the service schedules, and shall be subject to any further hearing for the purpose of requiring changes or additions in the schedules of service and operation or any of them.

(11) This Order shall take effect immediately, and shall continue in effect until changed or modified by an Order made by this Commission.

(12) This Order shall be served upon the Interborough Rapid Transit Company in the manner prescribed by law, and within five (5) days after the service of this Order, the Interborough Rapid Transit Company shall notify the Commission in writing whether the terms of this Order are accepted and will be obeyed.

SERVICE ORDER "B"

The Commission having by Order adopted on March 7, 1922, directed that a hearing be held, to the end that the Commission might determine whether the regulations, practices, equipment, appliances or service of the Interborough Rapid Transit Company in respect to transportation of persons and property in the City of New York are unjust, unreasonable, unsafe, improper or inadequate, and to determine the just, reasonable, safe, adequate and proper regulations, practices, equipment, appliances and service thereafter to be in force, to be observed and to be used in such transportation of persons and property and to fix and prescribe the same by order to be made by the Transit Commission and served upon said Interborough Rapid Transit Company; and hearings having been duly held, and the said Interborough Rapid Transit Company and The City of New York and the Transit Commission having appeared at said hearings by counsel; and the Commission having duly con-

sidered the evidence adduced before it at the aforesaid hearings and being of the opinion that the equipment of said Interborough Rapid Transit Company in respect to the transportation of persons or property within the City of New York is inadequate, and that the equipment hereinafter required is necessary in order to provide more adequate service for the public and ought hereafter to be used by said company in the transportation of persons or property; and the Commission having determined that the equipment hereinafter required is no more than is necessary to provide adequate service, it is

Ordered: that the Interborough Rapid Transit Company

(1) Order, equip, and have ready for operation, when and as hereinafter provided, three hundred and fifty (350) steel cars, for use on the Subway Division of said company.

(2) Order immediately, and equip and have ready for operation as soon as it is possible, and not later than for the 1922-1923 winter operation, one hundred (100) steel cars.

(3) Order on August 1st, 1922, fifty (50) new steel cars, and equip and have them ready for operation as soon thereafter as it is possible; provided that the Transit Commission reserves the right to order the purchase of said fifty (50) steel cars at any date earlier or later than August 1st, 1922, if and when, in its judgment, conditions change with respect to yard and terminal facilities, or the ability of the company to equip and operate these additional cars is affected through no fault of its own.

(4) Order the remaining two hundred (200) steel cars for use on the Subway Division, within six (6) months after the final contracts have been delivered for the construction of the 180th Street Yard and the Jerome Avenue Yard and the third addition to the 148th Street Yard and Shops, and equip and have ready for operation such two hundred (200) additional cars, as soon thereafter as it is possible.

(5) This Order shall take effect immediately.

(6) This Order shall be served upon the Interborough Rapid Transit Company in the manner prescribed by law, and within five (5) days after such service, the Interborough Rapid Transit Company shall notify the Commission in writing whether the terms of this Order are accepted and will be obeyed.

APPEARANCES:

CLARENCE J. SHEARN, Special Counsel, and GEORGE O. REDINGTON, Counsel, for the Transit Commission.

JOHN P. O'BRIEN, Corporation Counsel, and HERBERT S. WORTHLEY, Assistant Corporation Counsel, for the City of New York, appearing without prejudice to the rights of the City, and without waiving any objections of the City to the legal status and power of the Commission.

JAMES L. QUACKENBUSH, Counsel, and HENRY J. SMITH, and ARTHUR G. PEACOCK, of Counsel, for Interborough Rapid Transit Company.

OPINIONS

HARKNESS, *Commissioner*: This is a hearing instituted on motion of the Commission into the service and facilities of the Interborough Rapid Transit Company in the operation of the subways. The hearing was ordered on March 7, 1922, after months devoted to a general investigation of the affairs of the transit companies, and after extensive surveys of subway operation had been made and tabulated by the Commission's Transit Bureau. Eleven sessions have been held from March 15th to April 12th, at which 984 pages of testimony, accompanied by voluminous exhibits, were taken.

The issue in this case is not whether the service is inadequate. It concerns the extent to which an unquestionably inadequate service can and should be improved at this time. In these hearings, and also in the course of the investigation conducted by the Commission on the general transit situation, officials of the Interborough Company have admitted the prevalent extreme congestion, and have pleaded that in rush hours the track capacity practically has been reached, and that the Company has been giving all the service its financial means permit.

It must be recognized that rush-hour congestion can be fully relieved only by the construction of new subways. Pending this, however, much can be done by increasing the service toward the ends of the rush hours through the provision of new equipment. (This will be considered later on in the opinion). To meet the present needs, a major construction program should have been placed under contract five years ago, so that new lines would now be coming into operation.

Unfortunately, not only has such a project not been undertaken, but parts of the 1913 dual system lines are still unfinished. The Commission's plan for transit reorganization involves, through making the present investment of the City self-supporting, the setting aside of a revolving construction fund of between 250 and 300 million dollars. In this way subway construction to the extent of 25 to 50 million dollars annually can be financed, and new construction can somewhere near keep pace with traffic requirements.

At the best, however, these new lines cannot come into operation for four or five years. While awaiting this new construction, existing facilities must be used to the utmost, and new equipment supplied to permit the most intensive operation.

That the Interborough Company has fallen from exceptional financial strength to the verge of bankruptcy is unfortunately true. In part this is due to the War, and in part to the Company's own action in dissipating its reserves through the declaration of excessive dividends in the years 1914 to 1919. From whichever cause the results flowed, the initial study of the situation made by the Transit Commission when it took office about a year ago indicated that the Interborough Company was not then in a financial position to meet orders for increased service. It was apparent that if orders even comparatively minor in extent had been issued at that time the Company would have been forced into receivership. Looking ahead to a real solution of the transit problem, and not to mere palliatives, the Commission was convinced at that time that the greatest benefit to all concerned lay in keeping the Interborough Company going until financial conditions took a turn for the better and there was an opportunity to outline and develop the Commission's plan for a thoroughgoing reorganization of the transit companies.

At the present time financial conditions are materially better. The employees of the company have consented voluntarily to a ten per cent. reduction in wages, and the prices of materials have been steadily going down. The effect of the pressure exerted by the Commission for a recasting of the present outworn franchise and financial structure is indicated by the composition tentatively arrived at by representatives of the Interborough and Manhattan security holders looking to the reforming of the lease of the Manhattan Elevated and the raising of many million dollars for new financing during the next five years. The Commission has reserved its judgment on the essential elements of such a composition, but it is referred to here as indicating an improved situation and a disposition to cooperate.

The traffic counts made by the Commission staff indicate exceedingly heavy and, in large part, unnecessary overcrowding. Although the service during rush hours is practically up to track capacity, there is no operating reason why immediate and substantial relief should not be given during non-rush hours. Traffic counts on the Seventh Avenue Line express service northbound indicated that from 1:20 o'clock in the afternoon for twelve consecutive hours there were only three 20-minute periods when there were not more passengers than seats. On the East Side-Lexington

Avenue Line. (Express Service northbound) from 4 o'clock in the afternoon for 8 hours and 20 minutes consecutively there was only one 20-minute period when there was a surplus of seats over passengers. The overcrowding ran as high as 247%, i. e., there were nearly three and a half times as many people in the cars as there was seating capacity. The only criticism of these counts made by the Company officials was that they were taken at single stations, whereas, it was claimed, had they been taken at a number of stations the results would have shown a considerable fluctuation of the traffic and a large diminution in the loads at succeeding stations.

Whichever set of counts—the Commission's or the Company's—is considered, the need for large increases in the service is apparent. For non-rush hour service there is ample equipment. It is merely a matter of making greater use of existing facilities. In the rush hours, at the peak, the track capacity is very nearly, if not quite reached. The most that can be done at the height of the peak is possibly to put in a very limited number of additional trains. Toward the beginning and end of the rush periods material relief can be given by operating more trains. But with the number of cars the Company now has it is possible to supply the most intensive service only during the peak of the rush. At that time all the cars, except a few necessarily in the repair shops, are on the road, and the number is not sufficient to spread out the rush-hour service. The remedy for this, obviously, is the provision of more cars.

At present, during the non-rush hours, the Company generally operates on a four-minute headway, as against two minutes or less in the rush hours. Aside from the rush-hour crowding, the public desires, and is entitled to, as short a headway between trains as is practicable. For large sections of the population a four-minute headway really means eight minutes, because at the ends of the lines the operation is split, some cars going to one destination and some to another. For example, the passenger for Brooklyn, if he misses a Brooklyn train at Grand Central Station, would have to wait eight minutes, because the train which comes in at the end of four minutes is routed to South Ferry. As a first step, it is believed that, in general, the headway in non-rush hours should be reduced to three minutes instead of four. This will make the maximum interval for those going to The Bronx or Brooklyn six minutes instead of eight. This reduced headway, and the consequently greater number of trains operated, should do away largely with overcrowding in non-rush hours.

Intensive studies of operation indicate that in the rush hours it should be possible to get in a few more trains. At these times every bit of possible relief is needed, and the train schedules should be refused to permit additional service up to track capacity.

The need for additional equipment is admitted. The Company, in its initial proposal, introduced in evidence during the hearings, outlined a plan whereby 350 cars would be provided at various times during the next five years, the first lot of 50 not to be ordered until 1923. This program is impossible—it would mean, in effect, progressively increasing congestion.

The Company claimed, on its part, that even if it had available today all the cars planned for, it would have no place to put them; that the City had failed to provide the yards and shops it was obligated to provide under the operating contract. There has been some discussion about who was responsible for this condition, whether the operating company—through its request during the War for deferring certain construction work—or one or the other of the agencies acting for the City. There is, however, small profit in attempting to go back and assess responsibility for past delay. The important thing is to see that there shall be no unavoidable delay in the future, and that all concerned cooperate in the completion of the necessary yards and shops.

After carefully considering the schedule for the provision of additional equipment, the Commission has come to this conclusion: The Company should be required to order 350 additional cars, of these, 100 cars should be ordered at once, for delivery as soon as possible. It should order 50 more cars on the 1st of August next, for delivery as soon thereafter as possible. It should order the balance of 200 cars at a date not later than six months after the delivery of the contracts for the construction of the Jerome Avenue yard, the 180th Street yard and the 148th Street yards and shops. The 148th Street work, which involves the construction of a lead track, will take the longest time—fifteen to eighteen months. The ordering of the additional 200 cars within six months after this contract is let will therefore give the Company nine to twelve months within which to get this equipment. The yards will be necessary in advance of the time when it will be possible to put the new rolling stock on the road, because a considerable part of the assembling and final work on the cars will have to be done in the yards.

In order to provide for the 150 cars to be ordered at once and on August 1st, certain temporary yard facilities, because of pending delays on the main work, will have to be furnished. Plans for these temporary structures are well under way, and probably will be finished within the next two or three weeks.

There is, finally, one other point that needs consideration in connection with the provision of the increased service. The amount of increased service the Commission proposes to order is so substantial that the trained men now available will not be sufficient for operating the cars and for switching. It goes without saying that the Commission will not consider for a moment subjecting the traveling public to any risk incident to untrained crews. To carry out the schedule based on the headway the Commission proposes ordering will require an additional force of approximately 600 men. Even exhausting all the present reserves, it is possible to get at this time only 300 additional men. It is therefore necessary to put into effect the increased service in two stages: the first, as soon as necessary operating schedules can be prepared, that will exhaust the available trained personnel; and the second as soon as the necessary additional men can be trained. The Company claims—and this contention is sustained by reports of the Commission's experts—that an employee before being allowed to operate a train should have three or four months' training. Furthermore, in order to make any substantial change in the operation of as extensive and intensively operated a system as the subway, a large amount of detail preparatory work, such as the making of operating schedules, is necessary. The Commission is advised that 30 days is a reasonable time to allow for such work.

The conclusion, therefore, is that the Company be ordered to prepare the necessary schedules and to put in force on May 31st next an operating schedule based upon prescribed headways which will exhaust all the available operating personnel. This immediate additional service, which is the utmost practicable at this time, is very substantial in amount. It will provide approximately eight million additional car miles, or four hundred million additional car seat miles per year.

The Company further should be ordered to train the additional men necessary to operate the full service requirements under the headways deemed necessary by the Commission. It should submit detailed schedules therefor on or before August 15th, and put such

schedules, with any modifications ordered by the Commission, into effect on Monday, September 18th.

The result of these orders will be a large immediate increase in service which should be the more apparent as the traffic lessens during the summer months. Then, with the increasing traffic in the fall, will come into effect the Commission's full service requirements. Thereafter additional equipment will be coming into operation and make possible capacity service.

Orders carrying these recommendations into effect are submitted herewith.

O'RYAN, *Commissioner* (concurring): This proceeding indicated in a formal and legal manner what the general public through experience have for a long time been aware of, namely, that the service on the lines of the Interborough Rapid Transit Company has for a period of years been grossly inadequate. It is not necessary to summarize the details justifying this conclusion. They appear in the evidence as a result of actual counts made by experts of the number of cars and trains passing given points at stated times, and the number of passengers standing in each of the cars. Much evidence was taken concerning the ability of the Company to relieve this congestion. This evidence related both to the finances of the Company and to the physical limitations of the several lines in relation to the movement over them of a given number of trains per hour.

In the course of the proceeding it became apparent that the deficiencies in service was so great that the extent to which trains should be added would, from a practical point of view, become a financial problem rather than an operating problem. It is settled law that a regulatory commission, in the exercise of its regulatory powers over public service corporations, may not lawfully impose requirements, the cost of which would amount to confiscation of the company's property. After careful consideration of all the evidence offered in this proceeding, it became apparent that with the reduction in operating costs that has taken place during recent months, and with similar increase in revenues, there exists a very substantial sum which the Company may annually be required to expend for increased service, without violating the limitation of law referred to.

The betterment of service is largely a problem of running more

trains and more cars, which means the purchase of additional cars and an increase in the operating personnel sufficient to operate these additional cars. The Commission is of the opinion that the existing number of cars of the Company should be increased by 350. The Company's representatives during the hearings suggested the acquisition of these cars during the next five years, beginning with 50 cars to be ordered during the current year. The Commission is of the opinion that 100 cars should be ordered at once for delivery at the earliest practicable date; that 50 additional cars should be ordered in August for similar delivery; and that the remaining 200 cars should be ordered at a date not later than six months after the delivery of the contracts for the construction by the City of the Jerome Avenue Yard, the 148th Street Yard, and the 180th Street Yard and Shops, all of which are necessary for the housing and upkeep of the additional cars. The operation of these additional cars will require trained personnel. The existing trained personnel of the Company can be supplemented by not over 300 trained reserves at this time. This number of men are available for immediate service. The additional men needed will have to be trained. Operating schedules will have to be prepared. Thirty days is not an unreasonable time for such purpose.

The conclusion of the Commission is that the Company be ordered to prepare the necessary schedules, to be effective May 31st, the same to be based upon prescribed headways, using all available reserve personnel. This will give an immediate increase in service of 8,000,000 additional car miles or 400,000,000 additional car seat miles per year.

The Company should be ordered to commence the training without delay of the additional men necessary to operate the full service requirements under headways deemed necessary by the Commission for the best utilization of the cars to be made available, and for that purpose it will submit detailed schedules on or before August 15th, to be effective Monday, September 18th. As additional equipment becomes available, schedules will be modified so as to utilize the same in the manner best adapted for further improving the service.

In the Matter of the Tariff Schedules filed by SLAUGHTER W. HUFF and ROBERT C. LEE as RECEIVERS of the property of the New York and Queens County Railway Company, which is subject to the lien of the mortgage originally made by STEINWAY RAILWAY COMPANY of Long Island City to the State Trust Company, as Trustee, dated April 1, 1892.

No Case Number Assigned

New Tariff Schedules—Street Surface Railroads—Brief Statement as to Matter—Section 28 and 29 P. S. C. Law—The Receivers and the railway company have filed tariff schedules purporting to become effective at 2 A. M. on Wednesday, May 10th. At the instance of the Commission the time was extended from May 8th in order to permit of a discussion of the question whether the tariff filed by the Receivers came under the provisions of Section 28 or 29 of the Public Service Commission Law. Under Section 28 a new rate takes effect at once; under Section 29 it does not take effect for thirty days unless special permission be given by the Commission. Section 28 was placed in the law on its original enactment in 1907. There were then no tariff schedules on file, so that Section 28 covered all cases, and was then the all important one of the two provisions. After schedules had been filed in accordance with its provisions, Section 28 merely functioned with respect to future new lines, and Section 29 took care of all changes in rates on existing lines.

New Tariff Schedules—Street Surface Railroads—Receivers' Claim—Steinway Property "New Line"—Improper View of Law—Change in Controlling Agencies—Schedules Filed by Controlling Agencies Not a New Rate or Railroad.—Claim is made by Counsel for the Receivers that the splitting apart of the Old Steinway Railway properties from the New York and Queens County System, constitutes the Steinway property a "New Line" under the provisions of Section 28. This is stated as not the proper view of the law. Assuming for the moment that no receivership is involved, but that the old Steinway Railway Company had come back to life and had regained possession of its properties. The railroad covered by existing filed schedules would remain the same. There would be no change in it. The change would come in the controlling agencies. There would be two controlling agencies or companies instead of one, and the two schedules filed by those controlling agencies would not make a new rate or a new railroad, but, taken together, would work a change in an existing rate.

New Tariff Schedules—Street Surface Railroad—Spirit of P. S. C. Act—Section 29 Intended to Cover Changes in an Existing Rate on an Existing Railroad, Irrespective of Changes in Possession, Operation or Otherwise—Commission's Ruling.—The spirit of the act is that Section 28 was intended to cover the initial filing of all tariffs upon the enactment of the Public Service Commission Law and the subsequent filing of tariffs on new lines, but that Section 29 was intended to cover a change in an existing rate on an existing railroad, irrespective of the changes in possession, operation or otherwise that may cause such a change. The Commission rules, therefore, that the filing of a schedule by the Receivers does not properly come within Section 28, but must be deemed to fall within the provision of Section 29; that, therefore, it can-

not take effect for thirty days unless permission be given for a shorter period.

New Tariff Schedules—Street Surface Railroad—Rates or Method of Operation Contemplated by Schedules Not to Be Taken as Necessarily Invalid—Holders of Securities and Creditors of Lines Entitled to Exact Justice—Receivers and Company Entitled to Lawful Rate of Fare Which It is Lawfully Entitled to—Proper Course to Institute Inquiry into Proposed Tariffs and Conclude Same in Ten Days.—The decision that this tariff properly falls under Section 29 must not be taken as a conclusion that the rates or method of operation contemplated by the schedules are necessarily invalid. It means that during that necessary period of examination present rates shall continue. The holders of securities and the creditors of these lines are entitled to exact justice. The Receivers of the Steinway properties, on the one hand, and the New York and Queens County Railroad Company on the other, are entitled to a lawful rate of fare. What that rate is for either or both of those lines under the changed conditions the Commission is not now in a position to determine. It does purpose promptly to secure that information and accord to each line the return it is lawfully entitled to. In view of these conclusions and of all the circumstances it seems that the proper course is promptly to institute an inquiry into these proposed tariffs and the alleged necessity therefor, and if possible conclude that inquiry within ten days.

New Tariff Schedules—Street Surface Railroad—Simplest Method of Division Pending Inquiry.—During time of inquiry the simplest method of division would seem to be for the Receivers to collect and retain all joint fares collected on their lines going Eastward, and for the Company to collect and retain all joint fares collected on its lines going Westward. Some sort of an operating arrangement should also be made which will avoid changing cars.

Hearings closed May 9, 1922. Opinion approved May 9, 1922.

This proceeding came on before the Commission upon the filing of certain tariff schedules by Slaughter W. Huff and Robert C. Lee as Receivers of the property of the New York and Queens County Railway Company, alleged to be covered by the mortgage issued by the Steinway Railroad Company of Long Island City to the State Trust Company, as trustee, dated April 1, 1892, by which the lines of the New York & Queens County Railway Company were separated at or about the easterly boundary line of the Old City of Long Island City and an additional fare of five cents charged on said lines for a through trip thereover. An informal hearing and conference was held in this matter by appointment at the Commission's offices on May 8, 1922 and adjourned to May 9, 1922, when same were closed. Shortly after the closing of the hearings and on the same date thereof, the Commission approved the following opinion by Commissioner Harkness and directed the Secretary to transmit certified copies of said opinion forthwith to said Receivers Huff

and Lee and to William O. Wood, President of the New York and Queens County Railway Company.

Further facts appear in the Opinion.

OPINION

HARKNESS, *Commissioner*: The Receivers and the railway company have filed tariff schedules purporting to become effective at 2 A. M. on Wednesday, May 10th. At the instance of the Commission the time was extended from May 8th in order to permit a discussion of the question whether the tariff filed by the receivers came under the provisions of Section 28 or 29 of the Public Service Commissions Law. Under Section 28 a new rate takes effect at once; under Section 29 it does not take effect for thirty days unless special permission be given by the Commission.

The question of the Commission's power over the tariff schedule filed by the Receivers depends upon a construction of these sections. The Commission has had the benefit of argument by counsel representing the several interests, but there has been no citation of a case similar to this, nor have any authorities been found that are helpful.

After a most thorough and painstaking consideration of the question, this seems to me to be the common-sense view of the proper functions of these two sections of the Act: Section 28 was placed in the law on its original enactment in 1907. There were then no tariff schedules on file, so that Section 28 covered all cases, and was then the all important one of the two provisions. After schedules had been filed in accordance with its provisions, Section 28 merely functioned with respect to future new lines, and Section 29 took care of all changes in rates on existing lines.

It is now claimed by Counsel for the Receivers that the splitting apart of the old Steinway Railway properties from the New York and Queens County system constitutes the Steinway property a "new line" under the provisions of Section 28. I am convinced that this is not the proper view of the law. To avoid confusion, it might be assumed for the moment that no receivership is involved, but that the old Steinway Railway Company had come back to life and had regained possession of its properties. The railroad covered by existing filed schedules would remain the same. There would be no change in it. The change would come in the controlling agencies. There would be two controlling agencies or companies instead of one, and the two schedules filed by those controlling agencies would

not make a new rate or a new railroad, but, taken together, would work a change in an existing rate.

It therefore seems to me that the spirit of the act is that Section 28 was intended to cover the initial filing of all tariffs upon the enactment of the Public Service Commission Law and the subsequent filing of tariffs on new lines, but that Section 29 was intended to cover a change in an existing rate on an existing railroad, irrespective of the changes in possession, operation or otherwise that may cause such a change.

Holding these views, I must rule that the filing of a schedule by the Receivers does not properly come within Section 28, but must be deemed to fall within the provision of Section 29; that, therefore, it cannot take effect for thirty days unless permission be given for a shorter period.

There is provision in the regulations made by the Public Service Commission regarding the filing of tariffs covering the converse of this proposition; i. e., the change of ownership or control by an absorption of a line by another company. In that case it is provided that the new schedules may be made effective on ten days' notice. Although this provision is not controlling on the present situation, there is something to be said for the proposition that proper uniformity of rules would call for a similar rule in this case; i. e., where there is a change in ownership or control, whether by acquisition or separation, there should be a ten day notice of change in rates.

There are, moreover, underlying reasons for this. In this case there is involved not only what, in effect, amounts to a double fare, but a system that has been operated as a unit for twenty years or more is suddenly to be split apart and passengers coming to an artificial division line required to change cars. Moreover, at the end of the Steinway Line, near North Beach there is a segment extending about half a mile on each side for which no provision is made in either set of tariffs.

This kind of a situation, with the interruption and confusion that it is bound to cause public travel, even assuming undoubted necessity for the new schedules—justifies the provisions of Section 29, so that the situation may be adequately considered and proper arrangements made. The thirty day provision must be deemed to be a reflection of the view of the Legislature that sharp and sudden dislocations of rates or service should be avoided.

The decision that this tariff properly falls under Section 20 must

not be taken as a conclusion that the rates or method of operation contemplated by the schedules are necessarily invalid. It means that during that necessary period of examination present rates shall continue. The holders of securities and the creditors of these lines are entitled to exact justice. The lines operated by the New York and Queens County Railway Company have been in a deplorable condition for a long while, and, in considerable part at least, that condition can fairly be charged to lack of sufficient revenue. The Commission has been giving continuous attention to these lines and has nursed them along with a view to their incorporation in its plan of readjustment and their future rehabilitation under that plan. The receivership of the Steinway properties renders necessary a different treatment. The Receivers of the Steinway properties, on the one hand, and the New York and Queens County Railway Company on the other, are entitled to a lawful rate of fare. What that rate is for either or both of those lines under the changed conditions the Commission is not now in a position to determine. It does purpose promptly to secure that information and accord to each line the return it is lawfully entitled to. It goes without saying that the property interests in these railroads are entitled to justice as well as is the public using the lines. It is the purpose of the Commission to do justice to all concerned.

In view of these conclusions and of all the circumstances it seems that the proper course is promptly to institute an inquiry into these proposed tariffs and the alleged necessity therefor, and if possible conclude that inquiry within ten days. In that time it should be possible to decide whether the tariffs proposed are proper, and if not what the proper tariffs are for each line.

Furthermore, it is not intended that there should be any interference with the proper functioning of the Receivers. Pending a decision, a business-like arrangement should be made between the Receivers and the officials of the New York and Queens County Company for a division of the fare. Even assuming the possibility of legal proof of necessity for a higher rate, no great loss can be suffered through a brief delay. During this time the simplest method of division would seem to be for the Receivers to collect and retain all joint fares collected on their lines going Eastward, and for the Company to collect and retain all joint fares collected on its lines going Westward. Some sort of an operating arrangement should also be made which will avoid changing cars.

(Editor's Note: Receivers Huff and Lee ignored the Commission's opinion in this matter and proceeded to effect the operation called for by the tariff schedules as filed. Thereupon, the Commission, on May 10, 1922, approved a form of certificate addressed to Hon. Dana Wallace, District Attorney of Queens County, New York, setting forth the violation of law on the part of Huff and Lee, as Receivers and by the New York and Queens County Railway Company in the matter of the tariff schedules filed by them, and directed its Secretary to transmit it forthwith to the District Attorney of Queens County. Thereafter, Receivers Huff and Lee were examined before a City Magistrate and held for trial in the Court of Special Sessions in The City of New York, charged with violation of Section 29 of the Public Service Commission Law. Later they were released upon Habeas Corpus proceedings. (See Determinations of the Commission Passed Upon by Courts.)

In the MATTER OF THE APPLICATION OF THE BOARD OF ESTIMATE AND APPORTIONMENT of The City of New York, for an order directing THE BROOKLYN CITY RAILROAD COMPANY to change the location of its tracks in Fresh Pond Road between Woodbine Street and Mount Olivet Avenue, in the Borough of Queens.

CASE NO. 2631

Relocation of Track—Street Surface Railroad—Fresh Pond Road Originally a Country Road—Franchise Construction Followed Irregular Route of Rural Road—Fresh Pond Road Straightened by City—Railroad Tracks in Various Places on Road.—Fresh Pond Road in the Borough of Queens, City of New York, runs northwesterly from Myrtle Avenue to Flushing Avenue. It was originally a country road, with the irregular lines and curves characteristic of rural routes, and was a highway as early as the year 1666. Upon it, under a franchise granted by the Town Board of the Town of Newtown in 1892, there was constructed a street railroad line by the Brooklyn City Railroad Company which was finished in 1905. It followed the irregular route of the rural road. The locality which was once a rural district became built up and populated. The City laid out Fresh Pond Road as an 80-foot street and straightened it, including in the lines of the new street most of the old road. Curbs and sewers have been installed, but the street is unpaved. As a result of the straightening, the railway tracks which followed the irregular curves of the old country road are in various places not in the center of the present street, but close to its edge, and in various places cross it diagonally.

Relocation of Track—Street Surface Railroad—Application of Board of Estimate—Chapter 699 Laws of 1921—Commission Requested to Determine How Expense of Relocation of Track Shall Be Imposed and Borne.—By resolution dated March 10, 1922, the Board of Estimate and Apportionment, pursuant to the provisions of Chapter 699 of the Laws of 1921, made application to the Transit Commission for an order directing the Brooklyn City Railroad Company (Brooklyn Heights Railroad Company, Lessee) to change the location of its tracks in Fresh Pond

Road between Woodbine Street and Mt. Olivet Avenue from their present location to the center of said Fresh Pond Road and to determine the manner in which the cost and expense of such relocation of such railroad tracks shall be imposed and borne, in order to provide for the improvement of said Fresh Pond Road between said limits, as authorized by the Board of Estimate and Apportionment on April 28, 1916.

Relocation of Track—Street Surface Railroad—Present Location of Track Obviously Unsafe and Inconvenient—Fresh Pond Road Thoroughfare of Importance—Waste of Money for Railroad Company and City to Pave Road with Track as at Present Located—Conclusion that Track Should Be Relocated.—It is obvious, both from the maps in evidence and from the evidence, that it is quite out of the question from the point of view of safety and of convenience, for a street railroad to wander from curb to center of the road on which it is located or to trespass upon the sidewalk. Fresh Pond Road is, or will be, when paved, a thoroughfare of importance and the traffic on it would be imperilled and impeded by the continuation of the railroad in its present condition. As the tracks are at present located it would be a waste of the money of the railroad company and of the City to pave Fresh Pond Road. There is, therefore, no hesitation in concluding that the relocation of the tracks, as planned, along the center of Fresh Pond Road, is both expedient and necessary.

Relocation of Track—Street Surface Railroad—Railroad Company's Objection to Proceeding—Objection to Constitutionality of Statute—Objections Not Sustained—Act Prima Facie Constitutional.—Counsel for the Brooklyn City Railroad Company objected to this proceeding on the ground that the statute under which the application was made contravenes the provisions of the Constitution of the United States and of the State of New York in that it violates the provision in respect of taking property without due compensation, that the act deprives the company of the equal protection of the law and violates Article III of the Constitution of the State of New York in that it is a private or local bill and the title does not embrace one subject. Upon the last contention, it is held that the objection is not to be sustained. The constitutionality of similar bills has frequently been sustained against objection on the last ground. As to the other objections upon the score of constitutionality, it is the opinion, that the Commission must assume that the Act is prima facie constitutional in all respects.

Taking of Private Property Without Due Compensation—Commission to Determine Cost and Expense of Relocating Track and How Same Shall Be Imposed—Effect of Improper Determination of Commission—Must Assume, However, that Commission Will Decide Fairly and Justly—Language of Legislature in Respect to Allocation and Expense Vague.—As to taking the property of the railroad company without due compensation the Act provides that "the cost and expense of the relocation of such railroad tracks shall be imposed and borne in such manner as the Transit Commission may determine before, during or subsequent to such relocation. In determining such cost and expense such Commission may take into consideration the fact that such road was located before such street was laid out." Should the Transit Commission improperly decide the questions required by it to be determined under the language last quoted, it might amount in fact to a taking of the property of the railway company without due compensation, but such abuse of the discretion of the Commission would be subject to review in the Courts. The Legislature having provided a method for the allocation of the cost of the relocation unless it clearly appears that

such method of allocation is a taking of the railway company's property without compensation, it must be assumed that the Transit Commission will decide fairly and justly as to this matter and consequently upon the face of the statute there is no unconstitutionality on this ground. The language of the Legislature in respect to the allocation of the cost and expense is, however, somewhat vague.

Relocation of Track—Street Surface Railroad—Determination as to Cost and Expense—Railway Company's Intention to Build New Track—City's Share of Cost—Railway Company's Share of Cost—City to Pay its Share of Cost Before Commencement of Work.—If the railway company were to move the present existing track, it would obviously be fair that the City of New York should reimburse it the cost of relocating the present track with no additions and betterments amounting as aforesaid to \$16,380 plus the cost of changing overhead wires and shifting poles \$1,220, making a total of \$17,600. But inasmuch as the railway company has announced its intention not to move the present track, but to tear it up and build a new one, it is stated that in the last analysis the most practical and equitable way of arriving at the City's share of the cost of relocating the track is to allow to the railroad the loss in value of the unexpired value of the present track, namely, \$6,100; the cost of taking up, removing the old tracks, which the engineering testimony estimates at \$4,100; and of changing the trolley poles and wires at a cost of \$1,220; making a total cost to the railway company due to the relocation of the tracks as desired by the City of \$11,420. The last named sum is therefore the amount which should presently be allowed to the railway company by the City. It is thought just that the railway company should not have to wait until the new construction is completed before it receives its money. Delay of this sort does not seem fair, while there is also a possibility of further and future delay which would be even more unjust to the railway company. It is stated, therefore, that the City should pay to the railway company the sum of \$11,420 before the latter is required to commence the relocation of its tracks, and that upon receipt thereof the railway company should proceed with all due diligence.

Relocation of Tracks—Street Surface Railroad—Cost Figures Named Are Estimates—Allowance Made Should Not Be Commission's Final Determination—Accounts Should Be Adjusted After Work is Finished—Final Accounting Should Be Settled in Same Manner Provided for in Cases of Grade Crossing Eliminations—Question of Salvage from Old Track Reserved for Final Accounting.—Inasmuch as the figures named are estimates which do not and cannot precisely determine the cost to the railway, it is the opinion that the allowance of \$11,420 should not be the Transit Commission's final determination, but that accounts should be adjusted between the parties after construction is finished and if they do not then agree upon the same, that the final accounting should be settled by the Transit Commission upon the completion of the work in the same manner as is provided in the case of grade crossing eliminations, provided, however, that the estimated value of the unexpired life of the present track, namely, \$6,100, which is a conclusion based upon expert testimony and not a matter which is capable of settlement upon such accounting should be now definitely determined and fixed. The question of salvage from the old tracks should be reserved for the final accounting.

Hearings closed April 5, 1922. Order adopted and report and opinion approved May 11, 1922.

This proceeding came on before the Commission upon receipt of the following resolution of the Board of Estimate and Apportionment of The City of New York, adopted March 10, 1922:

Resolved, That the Board of Estimate and Apportionment, pursuant to the provisions of chapter 699 of the Laws of 1921, and without waiving the contention of the City that chapter 134 of the Laws of 1921 is unconstitutional and void, hereby makes application to the Transit Commission for an order directing the Brooklyn City Railway Company (Brooklyn Heights Railroad Company, lessee) to change the location of its tracks in Fresh Pond road between Woodbine street and Mount Olivet avenue, Borough of Queens, from their present location to the centre of said Fresh Pond Road. and to determine the manner in which the cost and expense of such relocation of such railroad tracks shall be imposed and borne, in order to provide for the improvement of said Fresh Pond Road between said limits, as authorized by the Board of Estimate and Apportionment on April 28, 1916.

On March 21, 1922, the Commission adopted a hearing order directing that a hearing be had in the matter of the above resolution on April 5, 1922. A hearing was held that day and closed, after which on May 11, 1922, the order and report and opinion set forth below were adopted and approved respectively.

Further facts appear therein.

ORDER DIRECTING RELOCATION OF TRACKS AND APPORTIONING EXPENSE

The Board of Estimate and Apportionment of The City of New York having, by resolution dated March 10, 1922, made application to the Commission, pursuant to Chapter 699 of the Laws of 1921, for an order directing The Brooklyn City Railroad Company to change the location of its tracks in Fresh Pond Road between Woodbine Street and Mount Olivet Avenue, in the Borough of Queens; and to determine the manner in which the cost and expense of such relocation of tracks should be imposed and borne; and the Commission having, by Order dated March 21, 1922, directed that a hearing on said application be held before Lincoln C. Andrews, Chief Executive Officer to the Commission, duly designated and certified to conduct said hearing on the 5th day of April, 1922, at 10:30 o'clock in the forenoon; and hearings having been duly held; and The Brooklyn City Railroad Company and The City of New York and the President of the Borough of Queens and the Transit Commission having appeared thereat by Counsel or otherwise; and the said Lincoln C. Andrews, Chief Executive Officer, having rendered his report and opinion, dated May 1, 1922, and the said report and opinion having been duly approved by the Commission and it appearing that The Brooklyn City Railroad Company does not desire to

relocate the existing tracks but to lay new tracks upon said Fresh Pond Road instead of moving the old tracks, and the same being approved by this Commission;

ORDERED

(1) That The Brooklyn City Railroad Company be and it is hereby directed to change the location of its railroad tracks in Fresh Pond Road between Woodbine Street and Mount Olivet Avenue, in the Borough of Queens, from their present location to the center of said Fresh Pond Road.

(2) That the expense of said removal of the present tracks in connection with such relocation is hereby estimated as follows:

Cost of removing old track..... \$4,100

Cost of changing overhead wires and shifting poles.. 1,220

(3) The value of the unexpired life of the present track is now found and determined to be \$6,100.

(4) That the share of the expense of such relocation to be borne by The City of New York is presently found and determined to be \$11,420, which amount is composed of the above enumerated items to be paid to said The Brooklyn City Railroad Company forthwith and upon receipt of same the said The Brooklyn City Railroad Company shall proceed diligently to perform the work herein ordered.

(5) That upon completion of said work the said The Brooklyn City Railroad Company may apply to the Commission for a final accounting, at which the allocation of the expense of the said relocation of tracks shall be definitely determined and the sum of \$11,420 allowed as aforesaid shall be subject to final adjustment as the items of the actual cost of removal or relocation of tracks, poles, wires or other material shall then be made to appear.

(6) That the question of salvage from the old tracks shall be reserved for determination upon such accounting.

FURTHER ORDERED, That a certified copy of this Order shall be served upon The Brooklyn City Railroad Company and The City of New York in the manner prescribed by law and that within ten (10) days after the receipt of same the said The Brooklyn City Railroad Company and The City of New York shall notify the Commission in writing whether the terms hereof are accepted and will be obeyed.

REPORT AND OPINION

ANDREWS, *Chief Executive Officer*: I, Lincoln C. Andrews, Chief Executive Officer, authorized and designated by certificate and order of the Commission dated March 21, 1922, to conduct the hearing herein and to take the testimony and report the same to the Commission with my opinion, do hereby report as follows:

Fresh Pond Road in the Borough of Queens, City of New York, runs northwesterly from Myrtle Avenue to Flushing Avenue. It was originally a country road, with the irregular lines and curves characteristic of rural routes, and was a highway as early as the year 1666. Upon it, under a franchise granted by the Town Board of the Town of Newtown in 1892, there was constructed a street railroad line by the Brooklyn City Railroad Company which was finished in 1905. It followed the irregular route of the rural road,

The locality which was once a rural district became built up and populated. The City laid out Fresh Pond Road as an 80-foot street and straightened it, including in the lines of the new street most of the old road. Curbs and sewers have been installed, but the street is unpaved. As a result of the straightening, the railway tracks which followed the irregular curves of the old country road are in various places not in the center of the present street, but close to its edge, and in various places cross it diagonally.

By resolution dated November 28, 1919 (Exhibit 2) the Board of Estimate and Apportionment provided for regulating and paving Fresh Pond Road from Metropolitan Avenue to Woodbine Street with a permanent pavement upon a concrete foundation. By resolution dated April 28, 1916 (Exhibit 2) the same Board had initiated proceedings for regulating, grading, curbing and laying sidewalks and incidental work in Fresh Pond Road from Woodbine Street to Flushing Avenue.

By resolution dated March 10, 1922 the said Board of Estimate and Apportionment, pursuant to the provisions of Chapter 699 of the Laws of 1921, made application to the Transit Commission for an order directing the Brooklyn City Railroad Company (Brooklyn Heights Railroad Company, Lessee) to change the location of its tracks in Fresh Pond Road between Woodbine Street and Mt. Olivet Avenue from their present location to the center of said Fresh Pond Road and to determine the manner in which the cost and expense of such relocation of such railroad tracks shall be imposed and borne, in order to provide for the improvement of said Fresh Pond Road between said limits, as authorized by the Board of Estimate and Apportionment on April 28, 1916.

The testimony and exhibits before me and an inspection of the locality show existing conditions to be briefly as follows:

Along the portion of Fresh Pond Road from Woodbine Street northwest to Mt. Olivet Avenue, while curbs are installed, the road itself is quite unpaved and is dusty or muddy according to weather conditions. At the intersection of Woodbine Street and Fresh Pond Road, the southeasterly end of the portion of the road involved in this proceeding, the railroad tracks are approximately in the center of Fresh Pond Road. About the center of the block between Woodbine Street and Palmetto Street, the tracks curve to the westerly and come close to the sidewalk curb. They continue on the westerly side of Fresh Pond Road close to the curb past Palmetto

Street, Gates Avenue, Linden Street, Grove Street and Ralph Street, to Bleecker Street, all this distance being practically on the westerly side of Fresh Pond Road and close to the curb; and curve easterly again to about the center line of the street at Bleecker Street. Thence the tracks continue along the center line of Fresh Pond Road across Metropolitan Avenue, and Winifred Street, to Evelin Street, when they again curve abruptly to the west until they are on the westerly sidewalk of Fresh Pond Road. In this position they continue past Elliot Street, and at Arctic Avenue, the tracks begin a gradual oblique to the easterly end continue thus past Mymaud Place, Adriatic Street, and Baltic Street to Pacific Street, at which point they are off the sidewalk but still not in the middle of the road; and here bend easterly, leaving Fresh Pond Road altogether and crossing Mt. Olivet Avenue at a point some distance to the east of Fresh Pond Road. As they cross Mt. Olivet Avenue they again bend abruptly to the westerly, cross Fresh Pond Road and run into Clermont Avenue where it diagonally intersects Fresh Pond Road, and continue to the northwest along Clermont Avenue. Without going into more exact detail as to the location of these tracks, it is obvious, both from the maps in evidence (Exhibits 3, a, b, c and d) and from the evidence, that it is quite out of the question from the point of view of safety and of convenience, for a street railroad to wander from curb to center of the road on which it is located or to trespass upon the sidewalk. Fresh Pond Road is, or will be, when paved, a thoroughfare of importance and the traffic on it would be imperilled and impeded by the continuation of the railroad in its present condition. As the tracks are at present located it would be a waste of the money of the railroad company and of the City to pave Fresh Pond Road. I therefore have no hesitation in concluding that the relocation of the tracks, as planned, along the center of Fresh Pond Road, is both expedient and necessary.

This application is made by the City under Chapter 699 of the Laws of 1921, which amended the Railroad Law by adding to it Section 192a, providing that in any city of the first class, having a population of 1,000,000 or more, the Board of Estimate and Apportionment of such city shall have the power to apply to the Transit Commission for an order directing any such street railway corporation to change the location of the tracks in said street forming a part of its route in a borough of such city containing not less than 300,000 nor more than 600,000 inhabitants, where, in the judgment

of such Transit Commission, the relocation of such tracks is necessary in connection with the maintenance, widening, change of grade, setting back of curb lines or other proper improvement of such street or highway.

It may be assumed that the Borough of Queens complies with the specifications of the Act and I have no difficulty in finding that the relocation of the tracks of the Brooklyn City Railroad Company in Fresh Pond Road is necessary in connection with the improvement of said road as contemplated by the Board of Estimate and Apportionment. The statute continues to the effect that the street railroad corporation shall start work upon the relocation of its tracks to the place and in the manner directed by the Transit Commission, at such time as the Commission may direct, and complete such change within a reasonable time thereafter. This should be provided for in the order of the Commission.

The statute further provides that the relocation of any track in accordance with its provision, "shall not limit, change or in any wise affect or prejudice the existing rights or franchise of any street railroad corporation and such corporation shall have the same right to operate its railroad on the relocated route in the same manner and to the same extent as it had the right so to do on the original route". It is evident that the language of the statute was framed as last quoted for the purpose of avoiding any interference with the existing franchise of the Brooklyn City Railroad Company on Fresh Pond Road and further so as to avoid raising any question as to whether the statute might not, in effect, grant a new franchise. The consent of the Town Board of the Town of Newtown (Exhibit), filed in the office of the Clerk of the County of Queens on January 23, 1893, of which a sworn copy is in the Transit Commission files, permits the Brooklyn City Railroad Company to operate a double track street surface railroad to be operated by horse power, cable or electricity, as provided in Chapter 565 of the Laws of 1890 "along, through and upon Fresh Pond Road from the point where the same is intersected by the boundary line between Brooklyn and Newtown to Grand Street". The consent further provides that the fare shall not be more than five cents for one continuous ride in the Town of Newtown and that the company is to pave between tracks and two feet outside of tracks. It is my opinion that the relocation of the tracks upon Fresh Pond Road, as now laid out (which includes the greater part of Old Fresh

Pond Road) is not to be considered such a change or alteration or departure from the terms of the consent of the Town Board of Newtown above mentioned as to amount in law or in fact to the granting of a new franchise or the abrogation or alteration of the old one. The language of the consent of the Town Board is very plain, the words being "along, through and upon Fresh Pond Road". The relocation of the tracks is likewise along, through and upon Fresh Pond Road and the railroad company gains no greater rights or privileges than it had before by reason of said relocation, nor does the City of New York, successor to the Town of Newtown, part with anything more than the Town of Newtown granted, namely, the right to construct and operate a two-track street railroad along, through and upon Fresh Pond Road. It therefore seems to me that since there is no change in the relative rights and position of the City and the railroad, there is in this case no question of the granting or revoking of the additional franchises. Fresh Pond Road continues as such and the rights of the City and of the railway company remain *in statu quo*.

Counsel for the Brooklyn City Railroad Company objected to this proceeding on the ground that the statute under which the application was made contravenes the provisions of the Constitution of the United States and of the State of New York in that it violates the provision in respect of taking property without due compensation, that the Act deprives the company of the equal protection of the law and violates Article III of the Constitution of the State of New York in that it is a private or local bill and the title does not embrace one subject. Upon the last contention I hold that the objection is not to be sustained. The constitutionality of similar bills has frequently been sustained against objection on the last ground. As to the other objections upon the score of constitutionality, I am of the opinion, that the Commission must assume that the Act is *prima facie* constitutional in all respects.

As to taking the property of the railroad company without due compensation the Act provides that "the cost and expense of the relocation of such railroad tracks shall be imposed and borne in such manner as the Transit Commission may determine before, during or subsequent to such relocation. In determining such cost and expense such Commission may take into consideration the fact that such road was located before such street was laid out". Should the Transit Commission improperly decide the questions required

by it to be determined under the language last quoted, it might amount in fact to a taking of the property of the railway company without due compensation, but such abuse of the discretion of the Commission would be subject to review in the Courts. The Legislature having provided a method for the allocation of the cost of the relocation unless it clearly appears that such method of allocation is a taking of the railway company's property without compensation, it must be assumed that the Transit Commission will decide fairly and justly as to this matter and consequently upon the face of the statute there is no unconstitutionality on this ground. The language of the Legislature in respect to the allocation of the cost and expense is, however, somewhat vague. I think it means no more than that the Transit Commission must distribute or allocate the cost and expense involved with fairness to both parties, and in making its determination, since the Legislature says that the Commission may take into consideration the fact that such road was located before such street was laid out, it seems to me that a fair and equitable basis for allocating the cost can be found.

But for the straightening of Fresh Pond Road the company would not have been required to remove its tracks. In so doing it would necessarily be put to several items of expense, namely, the cost of moving the tracks and the depreciation in the tracks caused by the moving; in other words, the shortening of the life of the tracks caused by such moving.

It appears, however, that the tracks and ties upon the portion of the road in question have been in use for a number of years. Sooner or later the railway company would have to replace the same or the major part thereof. However, in view of the fact that Fresh Pond Road is to be permanently paved, the company does not intend to save the old track, but will put in new rail of permanent construction (testimony of Mr. Clinton E. Morgan, General Manager, Minutes, pages 93, 105). The estimates prepared by the railway company have been examined by Mr. William L. Selmer, Civil Engineer to the Transit Commission, who considers that they are fair and correct. These items are as follows:

Cost of removing old track	\$4100.
Cost of changing overhead wires and shifting poles	1220.

Cost of relocating existing tracks to center of road without using new material except such as is necessary on account of shifting \$16380.

If the present tracks were to be moved, their period of future utility would be shortened. Testimony was given as to the reasonable value of the expectation of life (to borrow a term from the vocabulary of insurance) of the existing track if not moved. Mr. Morgan estimated the life of the rail as at least six or eight years (Minutes, page 93). Mr. Francis G. Daniels, an engineer of the Transit Commission, estimated such expectation of life as at least five years. Mr. Selmer, taking a mean between these two estimates, considers the term of the unexpired life of the present track as six and one-half years, of which the money value is given as \$6,100.

If the railway company were to move the present existing track, it would obviously be fair that the City of New York should reimburse it the cost of relocating the present track with no additions and betterments amounting as aforesaid to \$16,380. plus the cost of changing overhead wires and shifting poles \$1,220, making a total of \$17,600. But inasmuch as the railway company has announced its intention not to move the present track, but to tear it up and build a new one, it is my judgment that in the last analysis the most practical and equitable way of arriving at the City's share of the cost of relocating the track is to allow to the railroad the loss in value of the unexpired value of the present track, namely \$6,100; the cost of taking up and removing the old tracks, which the engineering testimony estimates at \$4,100; and of changing the trolley poles and wires at a cost of \$1,220; making a total cost to the railway company due to the relocation of the tracks as desired by the City of \$11,420.

The last named sum is therefore in my opinion the amount which should presently be allowed to the railway company by the City. The expense of paying does not enter into the question inasmuch as this is fixed and determined by statute. Chapter 699 of the Laws of 1921 gives the Transit Commission power to determine how "the cost and expense of the relocation of such railway tracks shall be imposed and borne * * * before, during or subsequent to such relocation". I think it is but just that the railway company should not have to wait until the new construction is completed before it receives its money. Delay of this sort does not seem to me fair, while there is also a possibility of further and future delay which

would be even more unjust to the railway company. I think that the City should pay to the railway company the sum of \$11,420 before the latter is required to commence the relocation of its tracks, and that upon receipt thereof the railway company should proceed with all due diligence.

Inasmuch as the figures named are estimates which do not and cannot precisely determine the cost to the railway company, it is my opinion that the allowance of \$11,420 should not be the Transit Commission's final determination, but that accounts should be adjusted between the parties after construction is finished and if they do not then agree upon the same, that the final accounting should be settled by the Transit Commission upon the completion of the work in the same manner as is provided in the case of grade crossing eliminations, provided, however, that the estimated value of the unexpired life of the present track, namely \$6,100, which is a conclusion based upon expert testimony and not a matter which is capable of settlement upon such accounting should be now definitely determined and fixed. The question of salvage from the old tracks should be reserved for the final accounting.

All of which is respectfully submitted.)

IN THE MATTER OF THE APPLICATION OF THE STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY for permission to move the station located at Bay Terrace, on its railroad line in the Borough and County of Richmond, City and State of New York, to a point about one thousand feet easterly from its present location and to change the name of the said station from Bay Terrace to Rice Manor.

CASE No. 2635

Removal of Station—Rapid Transit Railway Company—Application by Railroad Company—Fact as to Matter—Recommendation.—This is an application by the Staten Island Rapid Transit Railway Company for permission to move the station now located at Bay Terrace, Borough of Richmond, City of New York, to a point about 1,000 feet easterly from its present location, and to change its name to Rice Manor. There are about 35 houses in the immediate neighborhood of the Bay Terrace Station. There are at present only about 3 occupied houses in the vicinity of the point to which it is proposed to move it. The proposed location is adjacent to certain tracts of land which are being developed for residence

purposes. Doubtless the establishment of the station on the Rice Manor property would encourage building thereon. Equally it would encourage the sale of lots, which latter prospect seems to be an incentive actuating many of the signers of the petition to the railway company to move the station. In the meantime there is no difficulty in concluding that the Commission should not authorize the removal of this station under the present circumstances. Although the neighborhood of Rice Manor may ultimately outstrip Bay Terrace in population and dwellings, it has not done so as yet and no reason is seen why the people who have built in the neighborhood of Bay Terrace, who far outnumber those residing in the neighborhood of Rice Manor, should be inconvenienced by having to walk to the proposed site, particularly as there is no direct road or sidewalk leading thereto. Recommended, therefore, that the application be denied with permission to renew the same upon a showing of new and different facts and circumstances which may warrant the removal of the station at some future time, either to a point between Bay Terrace and Rice Manor, or as the case may then warrant.

Hearings closed May 5, 1922. Order adopted and report and opinion approved May 11, 1922.

This proceeding came on before the Commission upon receipt of an application dated April 13, 1922, from the Staten Island Rapid Transit Railway Company, by H. B. Voorhees, Vice-President, as follows:

The Staten Island Rapid Transit Railway Company, operating a steam railroad in the Borough and County of Richmond, City and State of New York, respectfully applies to your Honorable Board for permission to move the station now located at Bay Terrace, in the Borough and County of Richmond, City and State of New York, to a point about one thousand (1000) feet Easterly from its present location, and to change the name of said station from Bay Terrace to Rice Manor. This station is a frame building, together with platforms on both Eastbound and Westbound tracks.

A petition has been filed with the applicant, asking for the removal of this station, said petition being attached hereto and made part of this application, and the applicant is willing that said station be moved, and its name changed, if the same is approved by your Honorable Board.

The petition to the railroad company which had twenty-three signatures subscribed thereto, read as follows:

"The undersigned residents and property owners along the line of your road between Bay Terrace and Oakwood Stations, respectfully request that you have the present station at Bay Terrace removed to Lincoln Avenue, which is about eight hundred feet north of Bay Terrace, and approximately three hundred and fifty feet south of its original loca-

tion at Whitlock, in order to best serve the interest of your patrons and to keep pace with the development now in progress in that section."

On April 18, 1922, the Commission adopted a hearing order directing that a hearing be had upon the above application on May 5, 1922. The hearing was held that day and closed. After which, on May 11, 1922, the report and opinion of Chief Executive Officer Andrews and the order denying the company's application, as set forth below, were approved and adopted, respectively.

ORDER DENYING APPLICATION

The Staten Island Rapid Transit Railway Company having by communication, dated April 13, 1922, made application to the Commission for permission to remove the station now located at Bay Terrace, in the Borough and County of Richmond, City and State of New York, on its railroad line to a point about one thousand (1,000) feet easterly from its present location, and to change the name of said station from Bay Terrace to Rice Manor, and having submitted with said application a petition signed by twenty-three (23) residents of Bay Terrace, Staten Island, and locality to the same effect; and the Commission having on the 18th day of April, 1922, adopted an Order directing that a hearing be held on said application on the 5th day of May, 1922, at 10:30 o'clock in the forenoon, and designated and certified Lincoln C. Andrews, Chief Executive Officer of the Commission to conduct said hearing, and the said Chief Executive Officer having made his report and opinion, dated May 9, 1922, in which he finds and recommends that the application to remove said station be denied with permission to renew the same upon a showing of new and different circumstances which may warrant the removal of said station at some future time; and said report and opinion having been approved by the Commission:

ORDERED, That the application of The Staten Island Rapid Transit Railway Company for permission to remove the station located at Bay Terrace, one thousand (1,000) feet easterly and to change the name to Rice Manor, be and the same hereby is in all respects denied but with permission to renew the same hereafter upon a showing of new and different facts and circumstances affecting the proper location of said station at some future time.

FURTHER ORDERED, That a certified copy of this Order shall be served upon The Staten Island Rapid Transit Railway Company in the manner prescribed by law.

REPORT AND OPINION

I, LINCOLN C. ANDREWS, Chief Executive Officer, designated and certified by the Transit Commission to conduct the hearing herein by order dated April 18, 1922, do hereby report as follows:

This is an application by the Staten Island Rapid Transit Railway Company for permission to move the station now located at Bay Terrace, Borough of Richmond, City of New York, to a point about 1,000 feet easterly from its present location, and to

change its name to Rice Manor. There are about 35 houses in the immediate neighborhood of the Bay Terrace Station. There are at present only about 3 occupied houses in the vicinity of the point to which it is proposed to move it. The proposed location is adjacent to certain tracts of land which are being developed for residence purposes. It appears that certain sidewalks, sewers, paving, etc. have been installed thereon and that there are some foundations being built for houses. Upon the hearing before me there developed violent difference of opinion between the residents of Bay Terrace and the house, lot or tract owners near the new location. Strong opposition to the removal of the station is made by substantially everybody in Bay Terrace. The Rice Manor advocates urged that the Bay Chesterites could easily walk an additional thousand feet; to which the latter replied that the present and prospective Rice Manor inhabitants could walk the thousand feet just as well as they could, and furthermore that there is no direct road or sidewalk between the two places. In reply to the latter contention the advocates of the new location said that there will be one some day; an argument not very compelling upon the present situation.

Many other facts and circumstances were adduced at the hearing, not all of which were without relevancy to the subject matter; but it is unnecessary to recapitulate them. Doubtless the establishment of the station on the Rice Manor property would encourage building thereon. Equally it would encourage the sale of lots, which latter prospect seems to be an incentive actuating many of the signers of the petition to the railway company to move the station. At the hearing I suggested that a removal to a point somewhere between Bay Terrace and Rice Manor would be fair to both parties, provided road access thereto be secured; and suggested that the two contending factions should get together and agree upon some location for the station which would be convenient and fair to both sides. I am not without hopes that they will do so, particularly as some of the real estate people interested in Rice Manor offered to maintain a better station than the one at Bay Terrace, providing shelter from the weather and a permanent station agent, facilities which are lacking at the Bay Terrace Station.

In the meantime I have no difficulty in concluding that the Commission should not authorize the removal of this station under the present circumstances. Although the neighborhood of Rice Manor may ultimately outstrip Bay Terrace in population and dwellings,

it has not done so as yet and I fail to see any reason why the people who have built in the neighborhood of Bay Terrace, who far outnumber those residing in the neighborhood of Rice Manor, should be inconvenienced by having to walk to the proposed site, particularly as there is no direct road or sidewalk leading thereto.

I therefore recommend that the application be denied with permission to renew the same upon a showing of new and different facts and circumstances which may warrant the removal of the station at some future time, either to a point between Bay Terrace and Rice Manor, or as the case may then warrant.

IN THE MATTER OF THE HEARING ON MOTION OF THE COMMISSION
as to the propriety of adding "17th Street" to the name of the
Broadway Station on the Corona Branch of the Queensborough
Subway of the Interborough Rapid Transit Company.

CASE No. 2640

Change of Name of Station—Rapid Transit Railroad—Commission's Policy—Change to Be Made at Expense of Petitioner.—The railroad made no objection to having this name added on a smaller sign underneath the present name, "Broadway", but objects to going to any expense to having it done. It is the policy of the Transit Commission not to change names of stations if it can possibly be avoided. There appears, however, to be no objection to adding below the existing sign a suitable smaller sign carrying the words "17th Street" in case it is done without expense to the City or the road. Therefore, the representative of the Association was informed that they would have the authority of the Commission to add this sign if they submitted proper specifications to the Commission for approval before it was put up, and put it up at their own expense in a manner that the Commission approved of.

Hearing closed May 19, 1922. Report and opinion approved May 23, 1922.

This proceeding came on before the Commission upon receipt of a communication dated April 29, 1922, from the Elmhurst Heights Protective Association by Daniel Frank, Secretary, as to the possibility of changing the signs indicating the present Broadway Station on the Corona Subway Extension so as to read "Broadway (*underneath*) 17th Street". The Commission on May 11, 1922, adopted a hearing order directing that a hearing be had in the matter on May 19, 1922. A hearing was had that day and closed,

after which on May 23, 1922, the following report and opinion of Chief Executive Officer Andrews was approved.

REPORT AND OPINION

I, LINCOLN C. ANDREWS, Chief Executive Officer, designated and certified to conduct the hearing herein by order of the Commission dated May 4, 1922, do hereby report as follows:

This is an application by the Elmhurst Heights Protective Association to have the words "17th Street" added to the station sign at the Broadway Station on the Corona Line of the Interborough Rapid Transit Company. It appears from the evidence that Broadway has not been made an improved street in this neighborhood for a distance of about one half mile from the station and that 17th Street has been opened and is the street used by the residents of Elmhurst at this point. Also there exists a Broadway Station on the Astoria Branch of the Interborough. The City map shows the name "17th Street" as the street at this station.

The railroad made no objection to having this name added on a smaller sign underneath the present name "Broadway", but objects to going to any expense to having it done. It is our policy not to change names of stations if it can possibly be avoided. There appears, however, to be no objection to adding below the existing sign a suitable smaller sign carrying the words "17th Street" in case it is done without expense to the City or the road. This has been done in one or two other cases. I therefore informed the representative of the Association that they would have the authority of the Commission to add this sign if they submitted proper specifications to the Commission for approval before it was put up, and put it up at their own expense in a manner that we approved of.

IN THE MATTER OF THE APPLICATION OF THE BRONX TRACTION COMPANY under Section 184 of the Railroad Law for the approval of the Transit Commission of the State of New York of the declaration of abandonment of a portion of its route and franchises on Morris Park Avenue from Bronxdale Avenue to Williamsbridge Road in the Borough of The Bronx, County of Bronx, City and State of New York.

CASE No. 2158

Abandonment of Route—Street Railroad Corporation—Section Proposed to Be Abandoned—Operation Discontinued Since 1916.—The section of surface street railroad which it is proposed to abandon runs northeast along Morris Park Avenue from the junction of Bronxdale Avenue to Williamsbridge Road in the Bronx and is an extension or continuation of the existing tracks on Morris Park Avenue south of Bronxdale Avenue about one-half mile in length. Cars are operated by the Union Railway Company on the last mentioned tracks, but operation on the section sought to be abandoned has been discontinued since 1916.

Abandonment of Route—Street Railroad Corporation—Operation Temporarily Suspended Pending Construction of Sewer—P. S. C. Action—Operation Not Since Resumed.—In 1916 a sewer was built along Morris Park Avenue by the City and taking this occasion, the Union Railway Company applied to the Public Service Commission for permission temporarily to suspend the operation of its service during the period of reconstruction on that street. The Public Service Commission on November 6, 1916, in the above entitled case granted the application by a resolution wherein it permitted the railroad company to suspend operation of service on Morris Park Avenue "temporarily and only during the period of sewer construction and until the Commission shall otherwise direct". The operation then discontinued has not since been resumed.

Abandonment of Route—Street Railroad Corporation—Development of Building in Territory Involved Slow—City Improving Territory—Section Healthy and Advantageous—Company's Application Violently Protested.—The development of building in the territory involved has been very slow, partly due to war conditions, but undoubtedly because of the fact that while streets were laid out they were not paved or sewered, nor were there sidewalks, water mains, gas or electric service on the property. It seems that the City has now commenced to place sewers in some of the streets and that they have been graded, sidewalks laid and some other municipal work done, as shown by the Engineer's map in evidence. The neighborhood is generally speaking, a healthy and advantageous section for residence purposes and in the future will probably develop as such. In this connection, the application of the railroad permanently to abandon its service through the neighborhood naturally produced violent protest from the property owners and from City Officials in their behalf.

Abandonment of Route—Street Railroad Corporation—Commission's Deliberations—Street Railway Operation Question of Producing the Most Benefit to the Greatest Number—Revenues Derived from Car

Riders Must Be Spent Where Most Needed—Undeveloped Sections Secondary to Traffic Needs in Crowded Sections—Resumption of Service on Morris Park Avenue Extension Doubtless Would Stimulate Building as Well as Would Completion of City Improvements—People in Vicinity Can Reach Railway Facilities.—The Commission's deliberations must concern the benefit of the public at large as well as the development of the City. It bears in mind that street railway operation is a question of producing the most benefit to the greatest number; that the revenues derived by the railroad company from car riders must be spent where most needed; that undeveloped sections must wait for complete service until their traffic will justify the diversion of part of the railway earnings from the requirements of the heavy traffic in crowded sections to the growing needs of outlying and less inhabited sections. Doubtless it would stimulate building to resume service on the Morris Park Avenue Extension. Similarly it would and will stimulate building when the City completes sewers, paving, lighting, water and other essential improvements. At the present time the vast majority of people living in the vicinity can reach railway facilities by a walk of not more than a half-mile; most of them by considerably shorter distances.

Abandonment of Route—Street Railroad Corporation—Cost to Rehabilitate Tracks and Transmission for Resumption of Operation—Present Population Insufficient to Run Extension Except at Loss—Company Just Reached Point When Its Operation is at a Profit—Commission Must Carefully Weigh Advantages to Be Gained by Any Given Expenditure—Present Operation Insufficiently Called for and Financially Unprofitable—Time Not Far Distant When Contrary Will Be the Case—Recommendation.—The Bronx Traction Company would have to expend an amount variously estimated between five and ten thousand dollars to rehabilitate its tracks and transmission for operation. Without entering upon the detailed figures of censuses, estimates, operating expenses, etc., the evidence sufficiently demonstrated that under no possible circumstances would the present population of the neighborhood provide enough passengers to run the extension except at a loss to the company. This company has just reached a point when it has operated at the trifling profit of \$16,000, for the first nine months of this fiscal year. If it were paying dividends it would be another matter, but where financial conditions are such that every cent earned is needed for improvement of equipment, track, etc. the Commission must carefully weigh the advantages to be gained by any given expenditure. In view of the present character of the vicinity, it is stated that present operation is insufficiently called for and would be financially unprofitable. In view of the probable future of the vicinity, it is reasonably certain that the time is not very distant when the contrary will be the case. Recommended, that the Commission, at present, make no order directing the resumption of service; and that the present application to abandon be denied; all without prejudice to the right and power of the Commission hereafter to make such order or direction or grant such relief as may appear just and proper.

Hearing closed May 12, 1922. Order adopted and Report and Opinion approved May 31, 1922.

This proceeding came on before the Commission upon receipt of a petition dated April 4, 1922, from the Bronx Traction Company by Leslie Southerland, Vice President, for the approval of the Commission to a declaration of abandonment of a portion of its

route and franchises on Morris Park Avenue from Bronxdale Avenue to Williamsbridge Road. On April 11, 1922, the Commission adopted a hearing order directing that a hearing be had in the matter on April 24, 1922. A hearing was held that day and on May 12, 1922, on which latter date the hearings were closed. Later, on May 31, 1922, the Commission approved the report and opinion set forth below and adopted the following order:

ORDER DENYING APPLICATION

The Bronx Traction Company having by petition, dated April 4, 1922, made application to the Commission for the approval of a declaration of abandonment of a portion of its route and franchises on Morris Park Avenue from Bronxdale Avenue to Williamsbridge Road, in the Borough of the Bronx; and the Commission having by order, dated April 11, 1922, directed that a hearing on said application be held on the 24th day of April, 1922, which Order designated and certified the Chief Executive Officer to the Commission to conduct said hearing, to take testimony therein and to report the same to the Commission together with his opinion thereon for its decision and determination; and said hearing having been duly held, the said Chief Executive Officer having made his report and opinion, dated May 22, 1922, wherein he finds and recommends that the said application should be denied without prejudice to the rights and power of the Commission hereafter to make such order or direction or grant such relief as may appear just and proper, and the said report and opinion having been approved by the Commission on May 31, 1922:

Ordered, That the application of the Bronx Traction Company, dated April 4, 1922, for the approval of a declaration of abandonment of a portion of its route and franchises on Morris Park Avenue from Bronxdale Avenue to Williamsbridge Road, in the Borough of the Bronx be and it is hereby in all respects denied but without prejudice, however, to the rights and power of the Commission hereafter to make such order or direction, or grant such relief as may appear just and proper.

REPORT AND OPINION

I, LINCOLN C. ANDREWS, Chief Executive Officer, designated and certified to conduct the hearing herein by order of the Commission dated April 11, 1922, do hereby report as follows:

This is an application by the Bronx Traction Company for the approval by this Commission of a declaration of abandonment of a portion of its route and franchises. The section of surface street railroad which it is proposed to abandon runs northeast along Morris Park Avenue from the junction of Bronxdale Avenue to Williamsbridge Road in the Bronx and is an extension or continuation of the existing tracks on Morris Park Avenue south of Bronxdale Avenue about one-half mile in length. Cars are operated by the Union Railway Company on the last mentioned tracks, but

operation on the section sought to be abandoned has been discontinued since 1916.

The extension in question was constructed by the Bronx Traction Company in 1913 under a certificate of extension of route filed on May 6, 1913 and duly approved by the Public Service Commission. At that time the neighborhood through which the extension ran was practically uninhabited. It was owned by the Morris Park Estates. A race track which had existed on the property having been discontinued, the property was laid out in streets and sold at auction in parcels of one or several lots. In connection with this sale, it appeared that the Morris Park Estates paid for substantially all of the construction of the extension and that at the time of the auction cars were running along it. The Bronx Traction Company operated its cars over this half-mile extension for some three years, through uninhabited territory, substantially without patronage to support this operation. I should characterize the building and operation of this extension as distinctly premature.

In 1916 a sewer was built along Morris Park Avenue by the City and taking this occasion, the Union Railway Company applied to the Public Service Commission for permission temporarily to suspend the operation of its service during the period of reconstruction on that street. The Public Service Commission on November 6, 1916 in the above entitled case granted the application by a resolution wherein it permitted the railroad company to suspend operation of service on Morris Park Avenue "temporarily and only during the period of sewer construction and until the Commission shall otherwise direct". The operation then discontinued has not since been resumed.

The evidence submitted to me demonstrates that under present conditions, the extension would not at the present time be operated profitably if service thereon were presently resumed. It appears that many of those who bought lots at the Morris Park sale did so speculatively with the intention of reselling at a profit. While certain houses have been built, yet the development of building in Avenue, Williamsbridge Road and Sacket Avenue, the latter adjacent to the New York, New Haven & Hartford Railroad tracks, the territory involved, which is bounded by Bronxdale Road, Neill has been very slow, partly due to war conditions, but undoubtedly because of the fact that while streets were laid out, they were not paved or sewered nor were there sidewalks, water mains or gas or

electric service on the property. Building in a city like New York is slow in the absence of these conveniences. It seems that the City has now commenced to place sewers in some of the streets and that they have been graded, sidewalks laid and some other municipal work done, as shown by the Engineer's map in evidence. The purchasers of lots largely depended on these improvements for successful resales or for the possibility of building a house. Until recently they have been disappointed, but it is inferable from the testimony taken before me that their hopes of building or of cashing in on the investment at a profit are now reviving. The Morris Park land development project lay dormant till last year; but the City activities are aiding it, and to some extent new building is commencing. I have visited the neighborhood and generally examined the physical situation. It is, generally speaking, a healthy and advantageous section for residence purposes; and in the future will probably develop as such. In this connection the application of the railroad permanently to abandon its service through the neighborhood of their investments naturally produced violent protest from the property owners and from City officials in their behalf.

The questions, however, which the Commission considers do not necessarily involve the desires of people who purchased lots at a real estate sale with the hope of profit. It furthers the development of new sections, but its deliberations must concern the benefit of the public at large as well as the development of the City. It bears in mind that street railway operation is a question of producing the most benefit to the greatest number; that the revenues derived by the railroad from car riders must be spent where most needed; that undeveloped sections must wait for complete service until their traffic will justify the diversion of part of the railway earnings from the requirements of the heavy traffic in crowded sections to the growing needs of outlying and less inhabited sections. Doubtless it would stimulate building to resume service on the Morris Park Avenue extension. Similarly it would and will stimulate building when the City completes sewers, paving, lighting, water and other essential improvements. There is no doubt in my mind that the section in question will in the not very distant future become well built up and that this building will start as soon as the municipal improvements are installed. Certain property owners have in fact not waited for municipal improvements. While there is not a single house on Morris Park Avenue itself, yet there

are signs of building in the vicinity. Toward Sacket Avenue on the south and east of the territory bounded above, where it is not a long walk to the Tremont Avenue cars on West Farms Road, and toward the west corner of the territory where it is a short walk to the line on White Plains Road, a number of houses have been built. At the present time the vast majority of people living in the vicinity can reach railway facilities by a walk of not more than a half-mile; most of them by considerably shorter distances. This does not appear unreasonable in sparsely settled, undeveloped and outlying section.

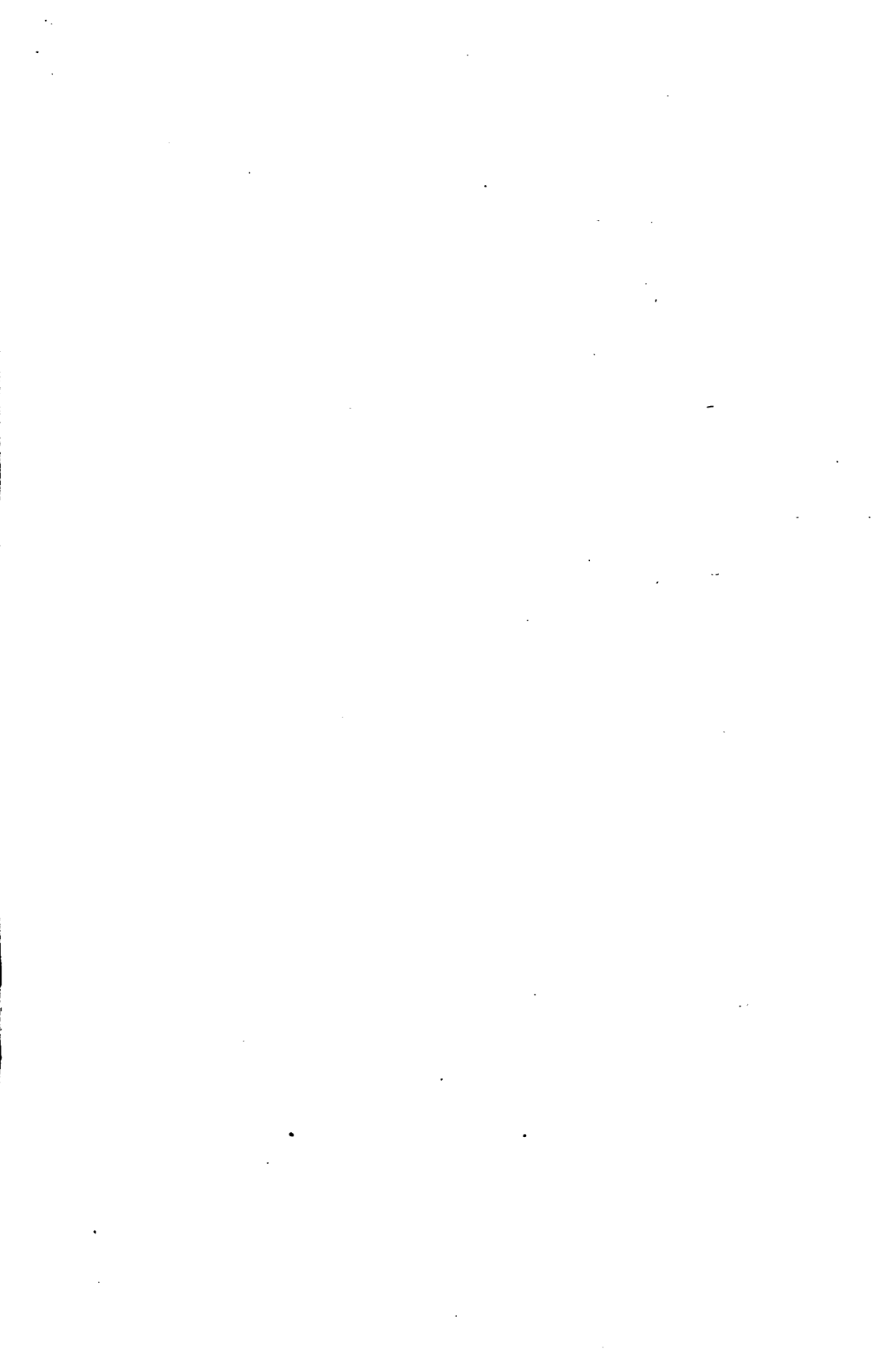
The Bronx Traction Company would have to expend an amount variously estimated between five and ten thousand dollars to rehabilitate its tracks and transmission for operation. Without entering upon the detailed figures of censuses, estimates, operating expenses, etc., the evidence sufficiently demonstrated to my mind that under no possible circumstances would the present population of the neighborhood provide enough passengers to run the extension except at a loss to the company. Is this expenditure now warranted? The function of the Commission is to see that the revenues of the railway company are expended to the best advantage of the greatest number of car riders. This company has just reached a point when it has operated at the trifling profit of \$16,000 for the first nine months of the fiscal year. If it were paying dividends it would be another matter, but where financial conditions are such that every cent earned is needed for improvement of equipment, track, etc., the Commission must carefully weigh the advantages to be gained by any given expenditure. A city-owned street railway might perhaps be constructed and operated at a loss, to the end of the development of outlying sections. But the funds of a private railway corporation operating under financial embarrassment must be expended with due consideration not so much for the needs of any given newly developing section as for the demands and exigencies of its general service. This is a case, perhaps an unusual one, when at the instance of a real estate development a surface railway preceded City facilities such as sewers, water, gas, etc. I take it as a general rule that the City should not demand that street railways should precede facilities; the pioneer transportation is ordinarily a steam or elevated railway or perhaps a legally operated bus line.

In view of the present character of the vicinity, it is my judg-

ment that present operation is sufficiently called for and would be financially unprofitable. In view of the probable future of the vicinity, I am reasonably certain that the time is not very distant when the contrary will be the case.

It is suggested that the City might shortly pave Morris Avenue and call upon the railway company to pay the cost of paving its tracks. It seems to me that such expenditure would, in the interests of those passengers who use the whole railway system, be unjustified, and that under such circumstances the extension might have to be abandoned. The Commission may well reserve its decision upon this until the occasion arises.

Upon the whole case, I recommend that the Commission at present make no order directing the resumption of service; and that the present application to abandon be denied; all without prejudice to the right and power of the Commission hereafter to make such order or direction or grant such relief as may appear just and proper.



In the Matter of the Hearing on the motion of the Commission upon the regulations, practices, equipment, appliances and service of the NEW YORK CONSOLIDATED RAILROAD COMPANY, the NEW YORK MUNICIPAL RAILWAY CORPORATION, and LINDLEY M. GARRISON, as Receiver of said NEW YORK CONSOLIDATED RAILROAD COMPANY and NEW YORK MUNICIPAL RAILWAY CORPORATION.

CASE No. 2628

Increase Service—Brooklyn Rapid Transit Lines—Order "A" to be Served on New York Consolidated Railroad Company and its Receiver—100 Additional Trains Per Day—Additional Car Mileage Effective—Seat for Each Passenger During Non-rush Hours.—Order "A" effective August 15, to be served upon the New York Consolidated Railroad Company, operating the subway and elevated lines of the B. R. T. system, and upon Lindley M. Garrison, as Receiver, requires the operation of 100 trains per day in addition to those at present operated, 60 to be supplied during the rush hours, and 40 during the non-rush hours. In the fall a further addition of 35 trains will be required. The additional car mileage effective August 15th will be approximately 9,000 during the non-rush hours, and 3,000 during the rush hours. In non-rush hours, all of the lines are required to provide the equivalent of a seat for every passenger.

Increase Service—Brooklyn Rapid Transit Lines—Order "B" to Order at Once and Equip 50 New Steel Cars—Every Effort Being Made to Have New Equipment Ready Coming Winter.—In a further order "B", the company is directed to order at once and to equip fifty new steel cars, so as to permit the removal of the last of the partially wooden cars from the Center Street loop. Every effort is to be made to have this new equipment ready for service during the coming winter.

Increase Service—Brooklyn Rapid Transit Lines—Headway Between Trains to Be Reduced—Broadway-Fourth Avenue Subway—Element of Competition Introduced Between Brooklyn Trains of I.R.T. and B.R.T. Systems—West End and Sea Beach Lines—Extension of Express Service From Jamaica to Chambers Street—Additional Express Service on Canarsie Line—Present Short Line Service From Chambers Street to Be Extended Two Hours.—On the local tracks of the Broadway-Fourth Avenue subway, there are now three lines operating, giving a combined interval of two and one-half minutes between trains in service from Whitehall Street to 57th Street, Manhattan. The extension of this service to Prospect Park, Brooklyn, which the order requires, will for the first time also give a two and one-half minute interval between Manhattan and the business section of Brooklyn. The shortest headway required under the Interborough service order during the same period of the day is three and one-half minutes. In this respect, in a sense, the element of competition in service is introduced between the Brooklyn trains of the two systems. The West End and Sea Beach Line, operating by way of the Manhattan Bridge on the express tracks of the Broadway-Fourth Avenue subway, will reduce the time between trains from seven and one-half minutes to six minutes up to 10.30 a.m. and after 3.00 p.m. from Times Square. In the fall, the six minute interval will be required throughout the middle of the day and throughout the evening. This will provide, incidentally, a three minute interval on the express tracks between 36th Street,

Brooklyn, and Times Square, via the Manhattan Bridge. The order requires the immediate extension of the present express service from Jamaica, past Broadway and Myrtle Avenue to Chambers Street, up to 10 o'clock in the morning, and from Chambers Street to Jamaica after 3 o'clock in the afternoon. Additional express service from Rockaway Parkway on the Canarsie line will also be operated via the third track on Broadway, Brooklyn. The present short line service from Chambers Street after the evening rush hours will be extended for two hours, or up to 8.30 p.m.

Increase Service—Brooklyn Rapid Transit Lines—New Steel Cars for Use in Centre Street Loop—Wooden Cars in Loop to Be Eliminated—Centre Street Loop Operation Tremendous Service to Large Section of Brooklyn—Commission Concerned Because of Risk Involved by Continued Use of Wooden Equipment.—The furnishing of the new steel cars ordered for use in the Centre Street Loop will permit the operation in the near future of an all-steel car equipment. For the next few months, pending the receipt of the 50 new cars, the existing available all-steel cars will be supplemented by 100 of the so-called "1300" series of metal-sheathed cars, having a base that is claimed to be as strong as a steel car. The latter are, of course, of the convertible type, seating 60 passengers. All remaining wooden cars operated in the Loop will be eliminated. The Centre Street Loop operation has been of tremendous service to a large section of Brooklyn, especially in view of the continuous delays in the construction and completion of the 14th Street Line. The present Transit Commission, the Transit Construction Commissioner and the Public Service Commission all have desired to continue this service without interruption, but all have been concerned because of the risk involved in the continued use of any wooden equipment.

Increase Service—Brooklyn Rapid Transit Lines—Studying B. R. T. Operation Commission Was Faced With Two Alternatives—Commission's Decision Gives Utmost in Increased Service.—In the study of B. R. T. operation made after the conclusion of the hearings, the Commission was faced with two alternatives. One was to require the withdrawal from the Centre Street Loop operation of all but the new steel equipment. To do this meant serious curtailment of the service—instead of giving improved service to the public it would be giving a substantially lessened service. The other alternative was to use temporarily the 100 steel-sheathed cars of the "1300" type. By doing this, the Commission would be in a position to better the service and reduce any risk involved, and through the purchase of the 50 new cars, provide complete all-steel equipment in the very near future. The Commission decided, considering all the circumstances, to accept the latter alternative and give the utmost in increased service.

Increase Service—Brooklyn Rapid Transit Lines—Operation of B.R.T. System More Complicated Than I.R.T. System—B.R.T. Equipment Newer—900 New Steel Cars Purchased—B.R.T. Company Voluntarily Added to Its Existing Schedules Without Waiting for Complete Orders.—In preparing its order the Commission took cognizance of certain facts materially differentiating the situation of the B.R.T. lines from those of the Interborough. The B.R.T. lines have an advantage over those of the Interborough, in the fact that their equipment is newer. Under its contract with the City, the Brooklyn Company has already purchased 900 new steel cars, the last 30 of which are scheduled to be finished within the next thirty or sixty days. With the delivery of the last of these, the company will have almost sufficient steel car equipment to serve present subway operation. The B.R.T. Company, moreover, during the period of the Commission's inquiry, voluntarily added to its

existing schedules without waiting for complete orders. These additions have somewhat reduced the extent of the orders to which they must now submit.

Sunday and Holiday Service—Brooklyn Rapid Transit Lines—Fluctuations in Travel—General Standard of Service for Excursion Riding—Company to Co-operate With Commission in Working Out Details—Commission to Withhold Its Order Pending Result of Informal Method of Handling Situation.—The Commission has had under consideration a further specific order covering Saturday and Sunday service, but has decided that in view of the fluctuations in travel on these days and holidays, due to weather and other causes, it will be practically impossible to establish definite schedules that would invariably be suitable. The Commission, therefore, has laid down a general standard of service for excursion riding which it will undertake to supervise closely. This in itself will require the operation of a great many additional cars and trains. The company has given assurances that it will co-operate with the staff of the Commission in working out the details of proper Sunday and holiday service, and in view of such assurances and of the difficulty of establishing definite schedules, the Commission has decided to withhold the issuance of such an order pending the results of the informal method of handling the situation.

Hearings closed May 12, 1922. Orders adopted and Memorandum approved July 13, 1922.

This proceeding came on before the Commission upon its own motion as a part of its general program of investigation into the service and equipment conditions of the railroads subject to its jurisdiction operating within the Greater City of New York. The hearing order was adopted on March 7, 1922, and the first hearing directed to be held on March 15, 1922. Considerable testimony was taken at the hearings and intensive study made of the conditions of travel on the Brooklyn Rapid Transit lines. The Commission had the active and sympathetic co-operation both of Judge Mayer of the Federal Court and Receiver Garrison of the B. R. T. lines. As a result the Orders were readily accepted by the Receiver and the companies he represents. The requirements for additional service cover practically all of the Brooklyn Rapid Transit lines and the benefits of same will add greatly to the comfort and despatch of their patrons.

The Orders adopted and Memorandum approved are as follows:

SERVICE ORDER "A"

The Commission having by Order adopted on March 7, 1922, directed that a hearing be held to the end that the Commission might determine whether the regulations, practices, equipment, appliances or service of the New York Consolidated Railroad Company, the New York Municipal Railway Corporation, or Lindley M. Garrison, as Receiver of said New York Consolidated Railroad Company and the New York Municipal Railway Corporation in respect to transportation of persons or property in the City of New York are unjust, unreasonable, unsafe, improper or inadequate,

and to determine the just, reasonable, safe, adequate and proper regulations, practices, equipment, appliances and service thereafter to be in force, to be observed and to be used in such transportation by persons and property, and to fix and prescribe the same by Order to be made by the Transit Commission and served upon said New York Consolidated Railroad Company, New York Municipal Railway Corporation, and Lindley M. Garrison, as Receiver of said New York Consolidated Railroad Company and New York Municipal Railway Corporation; and hearings having been duly held, and the said New York Consolidated Railroad Company, New York Municipal Railway Corporation, and Lindley M. Garrison, as Receiver of said New York Consolidated Railroad Company and New York Municipal Railway Corporation, the City of New York, and the Transit Commission having appeared at said hearings by Counsel, and the Commission having duly considered the evidence adduced before it at the aforesaid hearings, and being of the opinion that the regulations, practices and service of said New York Consolidated Railroad Company, New York Municipal Railway Corporation, and Lindley M. Garrison, as Receiver of said New York Consolidated Railroad Company and New York Municipal Railway Corporation in respect to the transportation of persons or property within the City of New York are unjust, unreasonable, improper and inadequate, and that the regulations, practices and service hereinafter specified are necessary in order to provide more adequate service for the public, and ought hereafter and until further Order of the Commission to be in force and to be observed and used by said companies and said receiver in the transportation of persons or property, and are reasonable to the said companies and said receiver in view of its equipment and financial condition; and the Commission having determined that the regulations, practices and service hereinafter specified are just, proper and reasonable in view of the equipment available and the present financial condition of the company, it is:

Ordered: that the New York Consolidated Railroad Company:

(1) Operate daily, except Saturday afternoons, Sundays and legal holidays by August 15, 1922, on its various lines or divisions, past the stations, in the directions, during the periods, and at the headways hereinafter specified, the following trains with a sufficient number of cars per train to conform to the traffic requirements.

(a) From Stillwell Avenue, Bay Parkway and 62nd Street Stations, as the case may be, on the West End Line westbound past the Pacific Street Station to the City Hall, Times Square, 57th Street and Queensboro Plaza Stations, as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
4:00 a.m. to 5:00 a.m.	3	20'
5:00 a.m. to 6:00 a.m.	4	15'
6:00 a.m. to 7:00 a.m.	8	7' 30"
7:00 a.m. to 8:00 a.m.	12	5'
8:00 a.m. to 9:00 a.m.	17	3' 32"
9:00 a.m. to 10:00 a.m.	11	5' 27"
10:00 a.m. to 11:00 a.m.	8	7' 30"
11:00 a.m. to 12:00 noon	8	7' 30"
12:00 noon to 1:00 p.m.	8	7' 30"
1:00 p.m. to 2:00 p.m.	8	7' 30"

From 2:00 p.m. to 4:00 a.m. westbound the number of trains and the average headways are determined by the number of trains and the average headways as set forth eastbound past the Pacific Street Station in (b) following.

(b) From Queensboro Plaza, 57th Street, Times Square and City Hall Stations, as the case may be, on the West End Line eastbound past the Pacific Street Station to 62nd Street, Bay Parkway and Stillwell Avenue Stations, as the case may be.

From 4:00 a.m. to 2:00 p.m. the number of trains and the average headways are determined by the number of trains and the average headways as set forth westbound past Pacific Street in (a) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p.m. to 3:00 p.m.	8	7' 30"
3:00 p.m. to 4:00 p.m.	9	6' 40"
4:00 p.m. to 5:00 p.m.	10	6'
5:00 p.m. to 6:00 p.m.	17	3' 32"
6:00 p.m. to 7:00 p.m.	13	4' 37"
7:00 p.m. to 8:00 p.m.	8	7' 30"
8:00 p.m. to 9:00 p.m.	8	7' 30"
9:00 p.m. to 10:00 p.m.	8	7' 30"
10:00 p.m. to 11:00 p.m.	8	7' 30"
11:00 p.m. to 12:00 midn.	8	7' 30"
12:00 midn. to 1:00 a.m.	8	7' 30"
1:00 a.m. to 2:00 a.m.	4	15'
2:00 a.m. to 3:00 a.m.	4	15'
3:00 a.m. to 4:00 a.m.	3	20'

(c) From Stillwell Avenue and Kings Highway Stations, as the case may be, on the Sea Beach Line westbound past the Pacific Street Station to Times Square, 57th Street and Queensboro Plaza Stations, as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
4:00 a.m. to 5:00 a.m.	3	20'
5:00 a.m. to 6:00 a.m.	4	15'
6:00 a.m. to 7:00 a.m.	8	7' 30"
7:00 a.m. to 8:00 a.m.	10	6'
8:00 a.m. to 9:00 a.m.	10	6'
9:00 a.m. to 10:00 a.m.	10	6'
10:00 a.m. to 11:00 a.m.	9	6' 40"
11:00 a.m. to 12:00 noon	8	7' 30"
12:00 noon to 1:00 p.m.	8	7' 30"
1:00 p.m. to 2:00 p.m.	8	7' 30"

From 2:00 p.m. to 4:00 a.m. westbound the number of trains and the average headways are determined by the number of trains and the average headways as set forth eastbound past the Pacific Street Station in (d) following.

(d) From Queensboro Plaza, 57th Street and Times Square Stations, as the case may be, on the Sea Beach Line eastbound past the Pacific Street Station to Kings Highway and Stillwell Avenue Stations, as the case may be.

From 4:00 a. m. to 2:00 p.m. the number of trains and the average headways are determined by the number of trains and the average headways as set forth westbound past the Pacific Street Station in (c) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p.m. to 3:00 p.m.	8	7' 30"
3:00 p.m. to 4:00 p.m.	10	6'
4:00 p.m. to 5:00 p.m.	10	6'
5:00 p.m. to 6:00 p.m.	10	6'
6:00 p.m. to 7:00 p.m.	10	6'
7:00 p.m. to 8:00 p.m.	8	7' 30"
8:00 p.m. to 9:00 p.m.	8	7' 30"
9:00 p.m. to 10:00 p.m.	8	7' 30"
10:00 p.m. to 11:00 p.m.	8	7' 30"
11:00 p.m. to 12:00 midn.	8	7' 30"
12:00 midn. to 1:00 a.m.	8	7' 30"
1:00 a.m. to 2:00 a.m.	5	12'
2:00 a.m. to 3:00 a.m.	3	20'
3:00 a.m. to 4:00 a.m.	3	20'

(e) From 86th Street Station on the Fourth Avenue Line north or westbound past the Pacific Street Station to Times Square, 57th Street and Queensboro Plaza Stations, as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
4:00 a.m. to 5:00 a.m.	3	20'
5:00 a.m. to 6:00 a.m.	4	15'
6:00 a.m. to 7:00 a.m.	10	6'
7:00 a.m. to 8:00 a.m.	10	6'
8:00 a.m. to 9:00 a.m.	10	6'
9:00 a.m. to 10:00 a.m.	9	6' 40"
10:00 a.m. to 11:00 a.m.	8	7' 30"
11:00 a.m. to 12:00 noon	8	7' 30"
12:00 noon to 1:00 p.m.	8	7' 30"
1:00 p.m. to 2:00 p.m.	8	7' 30"

From 2:00 p.m. to 4:00 a.m. the number of trains and the average headways are determined by the number of trains and the average headways as set forth east or southbound past the Pacific Street Station in (f) following:

(f) From Queensboro Plaza, 57th Street and Times Square Stations, as the case may be, on the Fourth Avenue Line south or eastbound past the Pacific Street Station to 86th Street.

From 4:00 a.m. to 2:00 p.m. the number of trains and the average headways are determined by the number of trains and the average headways as set forth north or westbound past Pacific Street Station in (e) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p.m. to 3:00 p.m.	8	7' 30"
3:00 p.m. to 4:00 p.m.	8	7' 30"
4:00 p.m. to 5:00 p.m.	8	7' 30"
5:00 p.m. to 6:00 p.m.	10	6'
6:00 p.m. to 7:00 p.m.	10	6'
7:00 p.m. to 8:00 p.m.	9	6' 40"
8:00 p.m. to 9:00 p.m.	8	7' 30"
9:00 p.m. to 10:00 p.m.	8	7' 30"
10:00 p.m. to 11:00 p.m.	8	7' 30"
11:00 p.m. to 12:00 midn.	8	7' 30"
12:00 midn. to 1:00 a.m.	6	10'
1:00 a.m. to 2:00 a.m.	5	12'
2:00 a.m. to 3:00 a.m.	5	12'
3:00 a.m. to 4:00 a.m.	3	20'

(g) From Stillwell Avenue, Brighton Beach, and the Kings Highway Stations, as the case may be, on the Brighton Line west or northbound past the Atlantic Avenue Station to Times Square, 57th Street and Queensboro Plaza Stations, as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
4:00 a.m. to 5:00 a.m.	3	20'
5:00 a.m. to 6:00 a.m.	4	15'
6:00 a.m. to 7:00 a.m.	6	10'
7:00 a.m. to 8:00 a.m.	19	3' 9"
8:00 a.m. to 9:00 a.m.	22	2' 44"
9:00 a.m. to 10:00 a.m.	17	3' 32"
10:00 a.m. to 11:00 a.m.	9	6' 40"
11:00 a.m. to 12 noon	8	7' 30"
12:00 noon to 1:00 p.m.	8	7' 30"
1:00 p.m. to 2:00 p.m.	8	7' 30"

From 2:00 p.m. to 4:00 a.m. westbound the number of trains and the average headways are determined by the number of trains and the average headways as set forth eastbound past the Atlantic Avenue Station in (h) following.

(h) From Queensboro Plaza, 57th Street and Times Square Stations, as the case may be, on the Brighton Line east or southbound past the Atlantic Avenue Station to Kings Highway, Brighton Beach and Stillwell Avenue Stations, as the case may be.

From 4:00 a.m. to 2:00 p.m. the number of trains and the average headways are determined by the number of trains and the average headways as set forth west or northbound past the Atlantic Avenue Station in (g) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p.m. to 3:00 p.m.	8	7' 30"
3:00 p.m. to 4:00 p.m.	8	7' 30"
4:00 p.m. to 5:00 p.m.	12	5'
5:00 p.m. to 6:00 p.m.	21	2' 51"
6:00 p.m. to 7:00 p.m.	17	3' 32"
7:00 p.m. to 8:00 p.m.	10	6'
8:00 p.m. to 9:00 p.m.	8	7' 30"
9:00 p.m. to 10:00 p.m.	6	10'
10:00 p.m. to 11:00 p.m.	7	8' 34"
11:00 p.m. to 12 midn.	8	7' 30"
12:00 midn. to 1:00 a.m.	6	10'
1:00 a.m. to 2:00 a.m.	3	20'
2:00 a.m. to 3:00 a.m.	4	15'
3:00 a.m. to 4:00 a.m.	3	20'

(i) From Rockaway Parkway, Atlantic Avenue, Eastern Parkway, 168th Street, 111th Street, Crescent Street, Metropolitan Avenue, Broadway and Myrtle Avenue Stations, as the case may be, on the Broadway (Brooklyn) Elevated Line westbound past the Marcy Avenue Station to Canal Street and Chambers Street Stations, as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
4:00 a.m. to 5:00 a.m.	3	20'
5:00 a.m. to 6:00 a.m.	4	15'
6:00 a.m. to 7:00 a.m.	25	2' 24"
7:00 a.m. to 8:00 a.m.	42	1' 26"
8:00 a.m. to 9:00 a.m.	41	1' 28"
9:00 a.m. to 10:00 a.m.	26	2' 18"
10:00 a.m. to 11:00 a.m.	11	5' 27"
11:00 a.m. to 12:00 noon	10	6'
12:00 noon to 1:00 p.m.	10	6'
1:00 p.m. to 2:00 p.m.	10	6'

From 2:00 p.m. to 4:00 a.m. the number of trains and the average headways are determined by the number of trains and the average headways as set forth eastbound past the Essex Street Station in (j) following:

(j) From Chambers Street and Canal Street Stations, as the case may be, on the Broadway (Brooklyn) Elevated Line eastbound past the Essex Street Station to Metropolitan Avenue, Fresh Pond Road, Crescent Street, 111th Street, 168th Street, Eastern Parkway, Atlantic Avenue and Rockaway Parkway Stations, as the case may be.

From 4:00 a.m. to 2:00 p.m. the number of trains and the average headways are determined by the number of trains and the average headways as set forth westbound past the Marcy Avenue Station in (i) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p.m. to 3:00 p.m.	10	6'
3:00 p.m. to 4:00 p.m.	17	3' 32"
4:00 p.m. to 5:00 p.m.	21	2' 51"
5:00 p.m. to 6:00 p.m.	45	1' 20"
6:00 p.m. to 7:00 p.m.	41	1' 28"
7:00 p.m. to 8:00 p.m.	25	2' 24"
8:00 p.m. to 9:00 p.m.	10	6'
9:00 p.m. to 10:00 p.m.	10	6'
10:00 p.m. to 11:00 p.m.	10	6'
11:00 p.m. to 12:00 midn.	10	6'
12:00 midn. to 1:00 a.m.	10	6'
1:00 a.m. to 2:00 a.m.	5	12'
2:00 a.m. to 3:00 a.m.	4	15'
3:00 a.m. to 4:00 a.m.	3	20'

(k) From Lefferts Avenue, Grant Avenue and Atlantic Avenue Stations, as the case may be, on the Fulton Street Line westbound past the Franklin Avenue Station to Kings County Bridge, Fulton Ferry and Park Row Stations, as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
4:00 a.m. to 5:00 a.m.	3	20'
5:00 a.m. to 6:00 a.m.	5	12'
6:00 a.m. to 7:00 a.m.	13	4' 37"
7:00 a.m. to 8:00 a.m.	26	2' 18"
8:00 a.m. to 9:00 a.m.	32	1' 52"
9:00 a.m. to 10:00 a.m.	11	5' 27"
10:00 a.m. to 11:00 a.m.	8	7' 30"
11:00 a.m. to 12:00 noon	8	7' 30"
12:00 noon to 1:00 p.m.	8	7' 30"
1:00 p.m. to 2:00 p.m.	8	7' 30"

From 2:00 p.m. to 4:00 a.m. westbound the number of trains and the average headways are determined by the number of trains and the average headways as set forth eastbound past the Franklin Avenue Station in (l) following.

(l) From Park Row, Fulton Ferry, Kings County Bridge Stations and Franklin Avenue as the case may be, on the Fulton Street Line eastbound past Franklin Avenue Station to Atlantic Avenue, Grant Avenue and Lefferts Avenue Stations, as the case may be.

From 4:00 a.m. to 2:00 p.m. the number of trains and the average headways are determined by the number of trains and the average headways as set forth westbound past the Franklin Avenue Station in (k) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p.m. to 3:00 p.m.	8	7' 30"
3:00 p.m. to 4:00 p.m.	8	7' 30"
4:00 p.m. to 5:00 p.m.	10	6'
5:00 p.m. to 6:00 p.m.	27	2' 13"
6:00 p.m. to 7:00 p.m.	27	2' 13"
7:00 p.m. to 8:00 p.m.	10	6'
8:00 p.m. to 9:00 p.m.	8	7' 30"
9:00 p.m. to 10:00 p.m.	8	7' 30"
10:00 p.m. to 11:00 p.m.	8	7' 30"
11:00 p.m. to 12:00 midn.	8	7' 30"
12:00 midn. to 1:00 a.m.	5	12'
1:00 a.m. to 2:00 a.m.	4	15'
2:00 a.m. to 3:00 a.m.	4	15'
3:00 a.m. to 4:00 a.m.	3	20'

(m) From Metropolitan Avenue and Wyckoff Avenue Stations, as the case may be, on the Myrtle Avenue Line westbound past the Washington Avenue Station to High Street and Park Row Stations as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
4:00 a.m. to 5:00 a.m.	3	20'
5:00 a.m. to 6:00 a.m.	5	12'
6:00 a.m. to 7:00 a.m.	10	6'
7:00 a.m. to 8:00 a.m.	10	6'
8:00 a.m. to 9:00 a.m.	10	6'
9:00 a.m. to 10:00 a.m.	9	6' 40"
10:00 a.m. to 11:00 a.m.	8	7' 30"
11:00 a.m. to 12:00 noon	8	7' 30"
12:00 noon to 1:00 p.m.	8	7' 30"
1:00 p.m. to 2:00 p.m.	8	7' 30"

From 2:00 p.m. to 4:00 a.m. westbound the number of trains and the average headways are determined by the number of trains and the average headways as set forth eastbound past the Washington Avenue Station in (n) following.

(n) From High Street and Park Row Stations, as the case may be, on the Myrtle Avenue Line eastbound past the Washington Avenue Station to Wyckoff Avenue and Metropolitan Avenue Stations, as the case may be.

From 4:00 a.m. to 2:00 p.m. the number of trains and the average headways are determined by the number of trains and the average headways as set forth westbound past the Washington Avenue Station in (m) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p.m. to 3:00 p.m.	8	7' 30"
3:00 p.m. to 4:00 p.m.	8	7' 30"
4:00 p.m. to 5:00 p.m.	8	7' 30"
5:00 p.m. to 6:00 p.m.	13	4' 37"
6:00 p.m. to 7:00 p.m.	10	6'
7:00 p.m. to 8:00 p.m.	9	6' 40"
8:00 p.m. to 9:00 p.m.	9	6' 40"
9:00 p.m. to 10:00 p.m.	8	7' 30"
10:00 p.m. to 11:00 p.m.	8	7' 30"
11:00 p.m. to 12:00 midn.	8	7' 30"
12:00 midn. to 1:00 a.m.	5	12'
1:00 a.m. to 2:00 a.m.	4	15'
2:00 a.m. to 3:00 a.m.	4	15'
3:00 a.m. to 4:00 a.m.	3	20'

(o) From 168th Street, 111th Street, Crescent Street and Eastern Parkway Stations, as the case may be, on the Lexington Avenue Elevated Line westbound past Washington Avenue Station to High Street and Park Row Stations, as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
4:00 a.m. to 5:00 a.m.	3	20'
5:00 a.m. to 6:00 a.m.	4	15'
6:00 a.m. to 7:00 a.m.	8	7' 30"
7:00 a.m. to 8:00 a.m.	8	7' 30"
8:00 a.m. to 9:00 a.m.	9	6' 40"
9:00 a.m. to 10:00 a.m.	8	7' 30"
10:00 a.m. to 11:00 a.m.	8	7' 30"
11:00 a.m. to 12:00 noon	8	7' 30"
12:00 noon to 1:00 p.m.	8	7' 30"
1:00 p.m. to 2:00 p.m.	8	7' 30"

From 2:00 p.m. to 4:00 a.m. westbound the number of trains and the average headways are determined by the number of trains and the average headways as set forth eastbound past Washington Avenue Station in (p) following.

(p) From High Street and Park Row Stations, as the case may be, on the Lexington Avenue Line eastbound past Washington Avenue Station to Eastern Parkway, Crescent Street, 111th Street and 168th Street Stations, as the case may be.

From 4:00 a.m. to 2:00 p.m. the number of trains and the average headways are determined by the number of trains and the average headways as set forth westbound past Washington Avenue Station in (o) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p.m. to 3:00 p.m.	8	7' 30"
3:00 p.m. to 4:00 p.m.	8	7' 30"
4:00 p.m. to 5:00 p.m.	8	7' 30"
5:00 p.m. to 6:00 p.m.	10	6'
6:00 p.m. to 7:00 p.m.	9	6' 40"
7:00 p.m. to 8:00 p.m.	8	7' 30"
8:00 p.m. to 9:00 p.m.	8	7' 30"
9:00 p.m. to 10:00 p.m.	8	7' 30"
10:00 p.m. to 11:00 p.m.	8	7' 30"
11:00 p.m. to 12:00 midn.	8	7' 30"
12:00 midn. to 1:00 a.m.	5	12'
1:00 a.m. to 2:00 a.m.	4	15'
2:00 a.m. to 3:00 a.m.	4	15'
3:00 a.m. to 4:00 a.m.	3	20'

(q) From Stillwell Avenue, Coney Island, and Kings Highway, as the case may be, on the Culver Line westbound past the 9th Avenue Station to High Street and Park Row, as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
4:00 a.m. to 5:00 a.m.	3	20'
5:00 a.m. to 6:00 a.m.	3	20'
6:00 a.m. to 7:00 a.m.	6	10'
7:00 a.m. to 8:00 a.m.	10	6'
8:00 a.m. to 9:00 a.m.	11	5' 27"
9:00 a.m. to 10:00 a.m.	8	7' 30"
10:00 a.m. to 11:00 a.m.	8	7' 30"
11:00 a.m. to 12:00 noon	7	8' 34"
12:00 noon to 1:00 p.m.	6	10'
1:00 p.m. to 2:00 p.m.	6	10'

From 2:00 p.m. to 4:00 a.m. westbound the number of trains and the average headways are determined by the number of trains and the average headways as set forth eastbound, past the 9th Avenue Station, in (r) following.

(r) From Park Row, High Street and 9th Avenue Stations, as the case may be, on the Culver Line eastbound, past the 9th Avenue Station to Kings Highway and Stillwell Avenue, as the case may be.

From 4 a.m. to 2 p.m. the number of trains and the average headways are determined by the number of trains and the average headways as set forth westbound past Pacific Street in (q) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p.m. to 3:00 p.m.	6	10'
3:00 p.m. to 4:00 p.m.	6	10'
4:00 p.m. to 5:00 p.m.	7	8' 34"
5:00 p.m. to 6:00 p.m.	17	3' 32"
6:00 p.m. to 7:00 p.m.	15	4'
7:00 p.m. to 8:00 p.m.	9	6' 40"
8:00 p.m. to 9:00 p.m.	6	10'
9:00 p.m. to 10:00 p.m.	6	10'
10:00 p.m. to 11:00 p.m.	6	10'
11:00 p.m. to 12:00 midn.	6	10'
12:00 midn. to 1:00 a.m.	6	10'
1:00 a.m. to 2:00 a.m.	4	15'
2:00 a.m. to 3:00 a.m.	3	20'
3:00 a.m. to 4:00 a.m.	3	20'

(s) From 65th Street Station on the 5th Avenue-Bay Ridge Line, westbound, past the St. Marks Avenue Station to High Street and Park Row Stations, as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
4:00 a.m. to 5:00 a.m.	3	20'
5:00 a.m. to 6:00 a.m.	4	15'
6:00 a.m. to 7:00 a.m.	6	10'
7:00 a.m. to 8:00 a.m.	8	7' 30"
8:00 a.m. to 9:00 a.m.	8	7' 30"
9:00 a.m. to 10:00 a.m.	6	10'
10:00 a.m. to 11:00 a.m.	6	10'
11:00 a.m. to 12:00 noon	6	10'
12:00 noon to 1:00 p.m.	6	10'
1:00 p.m. to 2:00 p.m.	6	10'

From 2 p.m. to 4 a.m. westbound, the number of trains and the average headways are determined by the number of trains and the average headways as set forth east bound past the St. Marks Avenue Station in (t) following:

(t) From Park Row and High Street Stations, as the case may be, on the 5th Avenue-Bay Ridge Line, eastbound, past the St. Marks Avenue Station, to 65th Street Station.

From 4 a.m. to 2 p.m. the number of trains and the average headways are determined by the number of trains and the average headways as set forth westbound past the St. Marks Avenue Station in (s) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p.m. to 3:00 p.m.	6	10'
3:00 p.m. to 4:00 p.m.	6	10'
4:00 p.m. to 5:00 p.m.	6	10'
5:00 p.m. to 6:00 p.m.	8	7' 30"
6:00 p.m. to 7:00 p.m.	8	7' 30"
7:00 p.m. to 8:00 p.m.	7	8' 34"
8:00 p.m. to 9:00 p.m.	6	10'
9:00 p.m. to 10:00 p.m.	6	10'
10:00 p.m. to 11:00 p.m.	6	10'
11:00 p.m. to 12:00 midn.	6	10'
12:00 midn. to 1:00 a.m.	6	10'
1:00 a.m. to 2:00 a.m.	3	20'
2:00 a.m. to 3:00 a.m.	3	20'
3:00 a.m. to 4:00 a.m.	3	20'

(u) From Prospect Park and Whitehall Street Stations, as the case may be, on the Whitehall-Queens Line, west or northbound, past the 14th Street Station to Times Square, 57th Street and Queensboro Plaza Stations, as the case may be:

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
9:20 a.m. to 10:00 a.m.	6	7' 30"
10:00 a.m. to 11:00 a.m.	8	7' 30"
11:00 a.m. to 12:00 noon	8	7' 30"
12:00 noon to 1:00 p.m.	8	7' 30"
1:00 p.m. to 2:00 p.m.	8	7' 30"
2:00 p.m. to 3:00 p.m.	8	7' 30"
3:00 p.m. to 4:00 p.m.	8	7' 30"
4:00 p.m. to 4:05 p.m.	1	7' 30"

(v) From Queensboro Plaza, 57th Street and Times Square Stations, as the case may be, on the Whitehall-Queens Line, south or eastbound, past the 14th Street Station to Whitehall Street and Prospect Park Stations, as the case may be.

From 8:50 a.m. to 4 p.m. the number of trains and the average headways are determined by the number of trains and the average headways as set forth west or northbound, past the 14th Street Station in (u) preceding.

(2) Within twenty (20) days after the service of the Order, the New York Consolidated Railroad Company shall make and file with the Transit Commission full and complete train schedules showing in detail the operation in accordance with the above prescribed number of trains, intervals between trains and cars per train. Thereupon the Commission may make changes or modifications in the schedules so filed, and within 3 days after their

receipt the Commission will issue the approved schedules to the New York Consolidated Railroad Company and Lindley M. Garrison, as receiver of said New York Consolidated Railroad Company. Within ten (10) days thereafter the said company shall furnish and operate service on its lines pursuant to said schedules.

(3) The New York Consolidated Railroad Company and Lindley M. Garrison, as Receiver of said New York Consolidated Railroad Company, is hereby ordered on and after thirty days' notice by the Commission but in any event not later than November 15, 1922, to operate daily, except Saturday afternoons, Sundays and legal holidays, on the lines or divisions, past the stations, in the directions, during the periods, at the times, and at the headways hereinafter specified, the following trains with a sufficient number of cars per train to conform to the traffic requirements.

(a) From Stillwell Avenue, Bay Parkway and 62nd Street Stations, as the case may be, on the West End Line westbound past the Pacific Street Station to the City Hall, Times Square, 57th Street and Queensboro Plaza Stations, as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
4:00 a.m. to 5:00 a.m.	3	20'
5:00 a.m. to 6:00 a.m.	4	15'
6:00 a.m. to 7:00 a.m.	8	7' 30"
7:00 a.m. to 8:00 a.m.	12	5'
8:00 a.m. to 9:00 a.m.	17	3' 32"
9:00 a.m. to 10:00 a.m.	10	6'
10:00 a.m. to 11:00 a.m.	10	6'
11:00 a.m. to 12:00 noon	10	6'
12:00 noon to 1:00 p.m.	10	6'
1:00 p.m. to 2:00 p.m.	10	6'

From 2:00 p.m. to 4:00 a.m. westbound the number of trains and the average headways are determined by the number of trains and the average headways as set forth eastbound past Pacific Street Station in (b) following.

(b) From Queensboro Plaza, 57th Street, Times Square and City Hall Stations, as the case may be, on the West End Line eastbound past the Pacific Street Station to 62nd Street, Bay Parkway and Stillwell Avenue Stations, as the case may be.

From 4:00 a.m. to 2:00 p.m. the number of trains and the average headways are determined by the number of trains and the average headways as set forth westbound past Pacific Street Station in (a) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p.m. to 3:00 p.m.	10	6'
3:00 p.m. to 4:00 p.m.	10	6'
4:00 p.m. to 5:00 p.m.	10	6'
5:00 p.m. to 6:00 p.m.	17	3' 32"
6:00 p.m. to 7:00 p.m.	13	4' 37"
7:00 p.m. to 8:00 p.m.	10	6'
8:00 p.m. to 9:00 p.m.	10	6'
9:00 p.m. to 10:00 p.m.	10	6'
10:00 p.m. to 11:00 p.m.	10	6'
11:00 p.m. to 12:00 midn.	10	6'
12:00 midn. to 1:00 a.m.	8	7' 30"
1:00 a.m. to 2:00 a.m.	4	15'
2:00 a.m. to 3:00 a.m.	4	15'
3:00 a.m. to 4:00 a.m.	3	20'

(c) From Stillwell Avenue and Kings Highway Stations, as the case may be, on the Sea Beach Line westbound past the Pacific Street Station to Times Square, 57th Street and Queensboro Plaza Stations, as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
4:00 a.m. to 5:00 a.m.	3	20'
5:00 a.m. to 6:00 a.m.	4	15'
6:00 a.m. to 7:00 a.m.	8	7' 30"
7:00 a.m. to 8:00 a.m.	10	6'
8:00 a.m. to 9:00 a.m.	10	6'
9:00 a.m. to 10:00 a.m.	10	6'
10:00 a.m. to 11:00 a.m.	10	6'
11:00 a.m. to 12:00 noon	10	6'
12:00 noon to 1:00 p.m.	10	6'
1:00 p.m. to 2:00 p.m.	10	6'

From 2:00 p.m. to 4:00 a.m. westbound the number of trains and the average headways are determined by the number of trains and the average headways set forth eastbound past the Pacific Street Station in (d) following.

(d) From Queensboro Plaza, 57th Street and Times Square Stations, as the case may be, on the Sea Beach Line eastbound past the Pacific Street Station to Kings Highway and Stillwell Avenue Stations, as the case may be.

From 4:00 a.m. to 2:00 p.m. the number of trains and the average headways are determined by the number of trains and the average headways as set forth westbound past the Pacific Street Station in (c) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p.m. to 3:00 p.m.	10	6'
3:00 p.m. to 4:00 p.m.	10	6'
4:00 p.m. to 5:00 p.m.	10	6'
5:00 p.m. to 6:00 p.m.	10	6'
6:00 p.m. to 7:00 p.m.	10	6'
7:00 p.m. to 8:00 p.m.	10	6'
8:00 p.m. to 9:00 p.m.	10	6'
9:00 p.m. to 10:00 p.m.	10	6'
10:00 p.m. to 11:00 p.m.	10	6'
11:00 p.m. to 12:00 midn.	10	6'
12:00 midn. to 1:00 a.m.	8	7' 30"
1:00 a.m. to 2:00 a.m.	5	12'
2:00 a.m. to 3:00 a.m.	3	20'
3:00 a.m. to 4:00 a.m.	3	20'

(e) From Stillwell Avenue and Kings Highway Stations, as the case may be, on the Culver Line westbound past the 9th Avenue Station to High Street and Park Row Stations, as the case may be.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
4:00 a.m. to 5:00 a.m.	3	20'
5:00 a.m. to 6:00 a.m.	3	20'
6:00 a.m. to 7:00 a.m.	6	10'
7:00 a.m. to 8:00 a.m.	10	6'
8:00 a.m. to 9:00 a.m.	11	5' 27"
9:00 a.m. to 10:00 a.m.	8	7' 30"
10:00 a.m. to 11:00 a.m.	8	7' 30"
11:00 a.m. to 12:00 noon	8	7' 30"
12:00 noon to 1:00 p.m.	8	7' 30"
1:00 p.m. to 2:00 p.m.	8	7' 30"

From 2:00 p.m. to 4:00 a.m. westbound the number of trains and the average headways are determined by the number of trains and the average headways as set forth eastbound past the 9th Avenue Station in (f) following.

(f) From Park Row, High Street and 9th Avenue Stations, as the case may be, on the Culver Line eastbound past the 9th Avenue Station to Kings Highway and Stillwell Avenue Stations, as the case may be.

From 4:00 a.m. to 2:00 p.m. the number of trains and the average headways are determined by the number of trains and the average headways as set forth eastbound past the 9th Avenue Station in (e) preceding.

<i>Period of the Day</i>	<i>Number of Trains</i>	<i>Average Headway</i>
2:00 p.m. to 3:00 p.m.	8	7' 30"
3:00 p.m. to 4:00 p.m.	8	7' 30"
4:00 p.m. to 5:00 p.m.	8	7' 30"
5:00 p.m. to 6:00 p.m.	17	3' 32"
6:00 p.m. to 7:00 p.m.	15	4'
7:00 p.m. to 8:00 p.m.	8	7' 30"
8:00 p.m. to 9:00 p.m.	8	7' 30"
9:00 p.m. to 10:00 p.m.	8	7' 30"
10:00 p.m. to 11:00 p.m.	8	7' 30"
11:00 p.m. to 12:00 midn.	8	7' 30"
12:00 midn. to 1:00 a.m.	6	10'
1:00 a.m. to 2:00 a.m.	4	15'
2:00 a.m. to 3:00 a.m.	3	20'
3:00 a.m. to 4:00 a.m.	3	20'

(4) Upon twenty days' notice the New York Consolidated Railroad Company and Lindley M. Garrison, as Receiver of said New York Consolidated Railroad Company, shall make and file with the Transit Commission full and complete schedules showing in detail the operation in accordance with the above prescribed number of trains, intervals between trains and cars per train. Thereafter the Commission may make changes or modifications in the schedules so filed, and after its approval the Commission will issue the approved schedules to the New York Consolidated Railroad Company and to Lindley M. Garrison, as Receiver of said New York Consolidated Railroad Company, and within ten days thereafter the said company shall furnish and operate service on its lines pursuant to such schedules.

(5) The service and the number and headway of trains and the number of cars in each train which the company is required by this Order, or is or may be required by any other Order by this Commission, to provide and operate on each of such lines, each of which such schedules shall be signed and countersigned by the proper officials and agents of the Company and shall show as to and for each line:

(a) the general route over which the operation of such line is to take place;

(b) the terminals of such line;

(c) the terminal of each run of car, cars or trains on any part of such line;

(d) the specific time of the day and night when cars or trains in each run shall be scheduled, respectively, to arrive at and depart from such terminal.

(6) The New York Consolidated Railroad Company and Lindley M. Garrison, as Receiver for said New York Consolidated Railroad Company, may apply to the Commission on or before the first Tuesday of each month, or at other times if sufficient cause be shown, for changes or modifications of any existing schedule due to variations in traffic.

(7) Failure to operate cars and trains and maintain service according to the requirements of this Order and of the schedules at the time on file and in force hereunder shall not be deemed a violation of this Order if the Commission upon a hearing finds and determines that such failure was due to causes beyond the control of the company and not in any respect due to its negligence or fault. Upon any hearing held by the Commission pursuant to this paragraph the burden shall be upon the company to show that its failure to operate cars and trains and maintain service according to the requirements of this Order and of the schedules at the time on file and in force hereunder was due to causes beyond its control and not in any respect due to its negligence or fault. If the Commission does not so find or determine, or if the company on such a hearing offers no evidence, the failure shall be deemed a violation of this Order.

(8) The term used in parts 1 and 3 of this Order specifying that the number of trains and the average headways in one direction are governed by the number of trains and the average headways as set forth in the opposite direction during certain periods of the day is defined as requiring a service in the direction and during the periods specified not less than the base schedule as specified for the line in question either during the mid-day, early morning hours, or as the case may be. It does not preclude the company from laying up its additional rush hour equipment at the north end or westerly terminals of the lines.

(9) The making and entry of this Order and anything done hereunder shall be without prejudice to any or further Order in this Case or in respect of the subject-matter hereof or of the service schedules, and shall be subject to any further hearing for the purpose of requiring changes or additions in the schedules of service and operation or any of them.

(10) This Order shall take effect immediately and shall continue in effect until changed or modified by an Order made by this Commission.

(11) This Order shall be served upon the New York Consolidated Railroad Company, New York Municipal Railway Corporation, and Lindley M. Garrison, as Receiver of said New York Consolidated Railroad Company and New York Municipal Railway Corporation, and within Five (5) days after the service of this Order the New York Consolidated Railroad Company, the New York Municipal Railway Corporation, and Lindley M. Garrison, as Receiver for the said New York Consolidated Railroad Company and New York Municipal Railway Corporation, shall notify the Commission in writing whether the terms of this Order are accepted and will be obeyed.

SERVICE ORDER "B"

<

The Commission having by Order adopted March 7, 1922, directed that a hearing be held to the end that the Commission might determine whether the regulations, practices, equipment, appliances or service of the New York Consolidated Railroad Company, the New York Municipal Railway Corporation, and Lindley

M. Garrison, as Receiver of said New York Consolidated Railroad Company and New York Municipal Railway Corporation, in respect to transportation of persons or property in the City of New York are unjust, unreasonable, unsafe, improper, or inadequate and to determine the just, reasonable, safe, adequate and proper regulations, practices, equipment, appliances and service thereafter to be in force, to be observed and to be used in such transportation of persons or property, and to fix and prescribe the same by Order to be made by the Transit Commission and served upon said New York Consolidated Railroad Company, New York Municipal Railway Corporation, and Lindley M. Garrison, as Receiver of said New York Consolidated Railroad Company and New York Municipal Railway Corporation; and hearings having been duly held, and the said New York Consolidated Railroad Company, New York Municipal Railway Corporation and Lindley M. Garrison, as Receiver of said New York Consolidated Railroad Company and New York Municipal Railway Corporation, and the City of New York, and the Transit Commission having appeared at said hearings by Counsel; and the Commission having duly considered the evidence adduced before it at the aforesaid hearings, and being of the opinion that the equipment of the said New York Consolidated Railroad Company, the New York Municipal Railway Corporation, and Lindley M. Garrison, as Receiver of the New York Consolidated Railroad Company and the New York Municipal Railway Corporation, in respect to the transportation of persons or property within the City of New York is inadequate, and that the equipment hereinafter required is necessary in order to provide more adequate service for the public, and ought hereafter to be used by said companies and said receiver in the transportation of persons or property; and the Commission having determined that the equipment hereinafter required is not more than is necessary to provide adequate service, it is

Ordered: that the New York Consolidated Railroad Company, the New York Municipal Railway Corporation, and Lindley M. Garrison, as Receiver of the said New York Consolidated Railroad Company and the New York Municipal Railway Corporation:

(1) Immediately proceed to provide and have ready for operation fifty (50) new all steel cars, permission being hereby granted to the said companies and to the said Receiver to retire or withdraw from service sixty-five (65) of the so-called elevated line type of cars constituting a part of the equipment of the Existing Railroad.

(2) This Order shall take effect immediately.

(3) This Order shall be served upon the New York Consolidated Railroad Company, the New York Municipal Railway Corporation, and Lindley M. Garrison, as Receiver of said New York Consolidated Railroad Company and New York Municipal Railway Corporation, in the manner prescribed by law, and within five (5) days of such service the New York Consolidated Railroad Company, the New York Municipal Railway Corporation, and Lindley M. Garrison, as Receiver for said New York Consolidated Railroad Company and New York Municipal Railway Corporation, shall notify the Commission in writing whether the terms of this Order are accepted and will be obeyed.

(4) This Order is made without prejudice to the right of the Commission to make further orders in this proceeding requiring the purchase and operation of further cars and equipment.

MEMORANDUM

By THE COMMISSION—Order "A" effective August 15, to be served upon the New York Consolidated Railroad Company, operating the subway and elevated lines of the B. R. T. system, and upon Lindley M. Garrison as Receiver, requires the operation of 100 trains per day in addition to those at present operated, 60 to be supplied during the rush hours, and 40 during the non-rush hours. In the fall a further addition of 35 trains will be required.

The additional car mileage effective August 15th will be approximately 9,000 during the non-rush hours, and 3,000 during the rush hours.

In non-rush hours, all of the lines are required to provide the equivalent of a seat for every passenger.

In a further order "B", the company is directed to order at once and to equip fifty new steel cars, so as to permit the removal of the last of the partially wooden cars from the Centre Street loop. Every effort is to be made to have this new equipment ready for service during the coming winter.

The Commission in providing the increased subway and elevated service and in the provision made for the financing of the purchase of new cars, has had the active and sympathetic co-operation both of Judge Mayer, of the Federal Court, and of Receiver Garrison. About \$750,000. will be spent upon the cars, notwithstanding the fact that the company is still in receivership.

The headway between trains will be affected as follows:

On the local tracks of the Broadway-Fourth Avenue subway, there are now three lines operating, giving a combined interval of two and one-half minutes between trains in service from Whitehall Street to 57th Street, Manhattan. The extension of this service to Prospect Park, Brooklyn, which the order requires, will for the first time also give a two and one-half minute interval between Manhattan and the business section of Brooklyn. The shortest headway required under the Interborough service order during the same period of the day is three and one-half minutes. In this respect, in a sense, the element of competition in service is introduced between the Brooklyn trains of the two systems.

The West End and Sea Beach line, operating by way of the Manhattan Bridge on the express tracks of the Broadway-Fourth Avenue subway, will reduce the time between trains from seven and one-half minutes to six minutes up to 10.30 a.m. and after 3.00 p.m.

from Times Square. In the fall, the six minute interval will be required throughout the middle of the day and throughout the evening. This will provide, incidentally, a three minute interval on the express tracks between 36th Street, Brooklyn, and Times Square, via the Manhattan Bridge.

The lines serving the Eastern District, or those operated via the Broadway elevated tracks, are limited by the number of trains that can be operated over the single rail on the Williamsburg Bridge and the tracks of the Centre Street loop. The present number of trains scheduled through is 42 during the maximum morning rush hours, and 48 during the maximum evening rush hours. This is the most intensive rapid transit service in the City, and the specifications of the Commission's order naturally do not exceed these figures.

It is the intention of the Commission to establish an all-day express service on the Broadway elevated line, via the third track. While the order does not require this at the present time, the railroad company understands that this service must be inaugurated in the near future. The order requires the immediate extension of the present express service from Jamaica, past Broadway and Myrtle Avenue to Chambers Street, up to 10 in the morning, and from Chambers Street to Jamaica after 3 o'clock in the afternoon. Additional express service from Rockaway Parkway on the Canarsie line will also be operated via the third track on Broadway Brooklyn. The present short line service from Chambers Street after the evening rush hours will be extended for two hours, or up to 8.30 p.m.

The lines serving the southern portion of Brooklyn, and those operating between Flatbush, Fourth Avenue and DeKalb Avenue stations, are limited by the total number of trains that can be operated through the Montague Street tunnel and over the Manhattan Bridge. The number of trains now operated past these controlling points during the rush hours is not the maximum that should be operated, according either to theoretical or practical standards. The proposed order specifies increases, with the provision that maximum loads to be carried be limited to 200% on steel cars that is, double the seating capacity, and 150% on the sheathed cars.

When the 14th Street-Eastern line is completed and in operation the entire service will be changed radically. A large part of the Centre Street loop traffic will be diverted to 14th Street, and Canal Street will be restored to its proper function as a way station, instead of serving, as it does at present under conditions of gross congestion, as a great interchange center.

The following are instances of the increases of seating capacity under the new train service, in terms of percentages, at various hours:

West End Line

9.00 a.m. to 10.00 a.m.	22%
3.00 p.m. to 4.00 p.m.	12½%
4.00 p.m. to 5.00 p.m.	25%
9.00 p.m. to 10.00 p.m.	14%

Sea Beach Line

9.00 to 10.00 a.m.	43%
10.00 to 11.00 a.m.	12½%
3.00 to 4.00 p.m.	25%
4.00 to 5.00 p.m.	25%
10.00 to 11.00 p.m.	14%

Fourth Ave. Line

8.00 to 9.00 p.m.	12½%
-------------------	------

Broadway Elevated

6.00 to 7.00 a.m.	25%
9.00 to 10.00 a.m.	42%
10.00 to 11.00 a.m.	10%
3.00 p.m. to 4.00 p.m.	70%
4.00 to 5.00 p.m.	5%
6.00 to 7.00 p.m.	14%
7.00 to 8.00 p.m.	47%
8.00 to 9.00 p.m.	11%
9.00 to 10.00 p.m.	25%
10.00 to 11.00 p.m.	25%
11.00 to 12.00 p.m.	25%
12.00 p.m. to 1.00 a.m.	25%

Fulton St. Line

8.00 to 9.00 a.m.	23%
-------------------	-----

Myrtle Ave. Line

7.00 to 8.00 a.m.	11%
8.00 to 9.00 a.m.	25%
4.00 to 5.00 p.m.	14%
5.00 to 6.00 p.m.	8%

Lexington Ave. Line

8.00 to 9.00 a.m.	12½%
11.00 to 12.00 midnight	12½%

Culver Line

8.00 to 9.00 a.m.	10%
-------------------	-----

The extension of the Whitehall-Queens line to Prospect Park decreases the interval by increasing the number of trains between Brooklyn and Manhattan from 16 to 24 per hour.

The furnishing of the new steel cars ordered for use in the Centre Street Loop will permit the operation in the near future of an all-steel car equipment. For the next few months, pending the receipt of the 50 new cars, the existing available all-steel cars will be supplemented by 100 of the so-called "1300" series of metal sheathed cars, having a base that is claimed to be as strong as a steel car. The latter are, of course, of the convertible type, seating 60 passengers. All remaining wooden cars operated in the Loop will be eliminated.

In 1913, a few months after the signing of the Dual Subway Contracts, the Public Service Commission put the Centre Street Loop Lines into operation, in order to afford immediate transit relief. To do this it was necessary to use the then existing wooden cars operated on the elevated lines: first, because the company did not have the steel cars; and second, because the elevated lines in and around East New York had to be reconstructed to carry the heavier weight of the steel equipment and to provide proper switching and interchange facilities. The last of this reconstruction work has but recently been finished.

The Centre Street Loop operation has been of tremendous service to a large section of Brooklyn, especially in view of the continuous delay in the construction and completion of the 14th Street Line. The present Transit Commission, the Transit Construction Commissioner and the Public Service Commission all have desired to continue this service without interruption, but all have been concerned because of the risk involved in the continued use of any wooden equipment.

The Loop situation differed, however, materially from the usual subway operation, for the reason that the Loop itself is largely a terminal, with, consequently, a more complete control of train movements. This service, furthermore, was put under the most complete and exacting supervision and direction. The transit officials who in the past have directed it continued to face the risk of criticism in order to keep up the maximum of service the public has required. This service has continued now nearly ten years, has carried millions of passengers, and has been without accident.

The existing schedules require 403 trains on the Broadway (Brooklyn) service operating into the Centre Street Loop. Of these,

approximately 250 are wooden cars; the rest are steel. As already stated, it has been impossible to substitute all-steel equipment. Under the order of the Commission all entirely wooden cars are ordered out of the Loop. Temporarily 100 cars of the "1300" series will be continued in this service. These cars are metal sheathed, and are far stronger and a better protected type than the wooden equipment heretofore used. The new steel cars in use on the B.R.T. have a carrying capacity almost double that of the old type. The company is therefore required immediately to purchase 50 new steel cars for 1922-23 operation, and on their receipt they will be placed in the Centre Street Loop operation and the 100 sheathed cars withdrawn. This will mark the final withdrawal of any other than complete steel cars from subway operation. In the study of B.R.T. operation, made after the conclusion of the hearings, the Commission was faced with two alternatives. One was to require the withdrawal from the Centre Street Loop operation of all but the new steel equipment. To do this meant serious curtailment of the service—instead of giving improved service to the public it would be giving a substantially lessened service. The other alternative was to use temporarily the 100 steel-sheathed cars of the "1300" type. By doing this, the Commission would be in a position to better the service and reduce any risk involved, and through the purchase of the 50 new cars, provide complete all-steel equipment in the very near future.

The Commission decided, considering all the circumstances, to accept the latter alternative and give the utmost in increased service.

The Commission desired to order at this time sufficient cars to cover needs which it is foreseen will arise in the near future. The financial entanglements of the company, due to its being in the hands of a receiver, however, absolutely preclude the financing at this time of a large capital outlay. There are already outstanding fourteen million dollars of receiver's certificates and no means could be found for issuing and financing another, and possibly subordinate, issue of receiver's certificates. Furthermore the delay in the construction of the Fourteenth Street Line has deferred the time when otherwise at least one hundred additional cars would be required. The most that could be done, therefore, was to require the immediate purchase of 50 cars, to be financed through existing available funds; so the matter of requiring the purchase of more than 50 cars was put over until the fall, when it is expected that the improving financial condition of the company will permit further outlays.

In preparing its order the Commission took cognizance of certain facts materially differentiating the situation of the B.R.T. lines from those of the Interborough.

The operation of rapid transit lines by the B.R.T. is more complicated, because in many cases two or more lines operate particular tracks in common over part of the routes and then divert in order to cover widely separated portions of the city.

The ratio of traffic carried during the middle of the day as compared with the traffic of the rush hours furthermore is low as compared with that of the other company's, for the reason that so many passengers living in Brooklyn work in the Borough of Manhattan. The midday riding of these passengers therefore takes place in Manhattan instead of over lines of the New York Consolidated, with the result that the longer midday headway is reasonable in Brooklyn where it would not be permissible in Manhattan.

The B. R. T. lines have an advantage over those of the Interborough, in the fact that their equipment is newer.

Under its contract with the city, the Brooklyn company has already purchased 900 new steel cars, the last 30 of which are scheduled to be finished within the next thirty or sixty days. With the delivery of the last of these, the company will have almost sufficient steel car equipment to serve present subway operation.

The B. R. T. Company, moreover, during the period of the Commission's inquiry, voluntarily added to its existing schedules without waiting for complete orders. These additions have somewhat reduced the extent of the orders to which they must now submit.

The Commission has had under consideration a further specific order covering Saturday and Sunday service, but has decided that in view of the fluctuations in travel on these days and holidays, due to weather and other causes, it will be practically impossible to establish definite schedules that would invariably be suitable. The Commission, therefore, has laid down a general standard of service for excursion riding which it will undertake to supervise closely. This in itself will require the operation of a great many additional cars and trains.

The company has given assurances that it will co-operate with the staff of the Commission in working out the details of proper Sunday and holiday service, and in view of such assurances and of the difficulty of establishing definite schedules, the Commission has decided to withhold the issuance of such an order pending the results of the informal method of handling the situation.

In the Matter of the Application of the HAMILTON COMMUNITY COUNCIL to have a new subway station located at 151st Street and Broadway, in the Borough of Manhattan, City of New York.

CASE No. 2658

R. T. 4049

New Subway Station—Interborough Rapid Transit Company—Application by Hamilton Community Council—Present Stations Twelve Blocks Apart—Proposed Station Midway between Two.—This is an application by the Hamilton Community Council, a civic organization composed of residents of the Washington Heights section of Manhattan, for the installation of a subway station at 151st Street on the Broadway Line of the Interborough Rapid Transit Company. The two stations south and north of the proposed additional station are respectively located at 145th Street and 157th Street and Broadway, 12 blocks apart. The proposed station would be midway between the two, or six blocks from either.

New Subway Station—Interborough Rapid Transit Company—Argument in Favor of Station—Certain Persons Would be Convenienced by Establishment of Proposed Station—Same Persons Within Short Walk of Elevated Stations.—The argument in favor of the station reduces itself to the simple proposition that certain persons have to walk a distance which it takes twelve or fifteen minutes to cover to reach either the 145th or the 157th Street Stations. Among them are persons living east of Amsterdam Avenue. They would undoubtedly be convenienced by the establishment of the proposed station. The neighborhood is now well populated and there is a certain congestion of traffic in the existing subway stations during the rush hours. The persons who have to walk about fifteen minutes to one of the subway stations are, however, within a much shorter walk of the elevated railroad stations on the Ninth Avenue Line.

New Subway Station—Interborough Rapid Transit Company—Elementary Fact in Rapid Transit—Commission Must Look at Question From Point of View of All Patrons—Station at 151st Street Necessarily Calls for Stations at Other Points Equally Widely Separated—Result Would be Stations Every Six or Seven Blocks—Consequently Retardation of Traffic.—It is an elementary fact in rapid transit that the more stations there are, the slower the transit is. The Commission must look at the question from the point of view of all the patrons of the line rather than that of the passengers coming from a certain section. If a station is put in at 151st Street, there is no good reason why stations should not be installed at other points where existing stations are equally widely separated, and the result would be a station every six or seven blocks with a consequent retardation of traffic.

New Subway Station—Interborough Rapid Transit Company—Projected Subways to Relieve Congestion in Washington Heights Section—When New Subways are Completed Needs for Station in Question Will be Largely Done Away With.—The projected subway up Eighth Avenue and Amsterdam Avenue and the projected extension of the B.R.T. Broadway Subway up Central Park West and into the Washington Heights section will provide such additional facilities as to relieve congestion on the present lines, and when that is done the need for a station between 145th and 157th Streets on the Broadway Line will be largely if not wholly done away with.

New Subway Station—Interborough Rapid Transit Company—Conclusion Reached.—The conclusion reached is that the proposed station would inconvenience a larger number of people than it would accommo-

date, and that the expense of installing it would not be warranted by the convenience which it would offer.

Hearings closed July 12, 1922. Order adopted and Report and Opinion Approved July 18, 1922.

The application in the above entitled proceeding was originally made to the Board of Estimate and Apportionment of The City of New York under date of May 11, 1922. At the meeting of that Board held on May 19, 1922, the matter was referred to its Committee of the Whole. Under date of May 24, 1922, James W. Reed, Assistant Engineer of that Board concurred in by A. G. Culver, also an Assistant Engineer of that Board, made the following report to the Committee of the Whole:

"The matter of an additional station on the Broadway subway between 145th and 157th Streets has been brought up at intervals from 1908 down to the present time; and at each recurrence of the matter the reasons against the construction of another station have outweighed the reasons in favor of such construction.

The proposal of the Hamilton Community Council for a new station at 151st Street has nothing in its favor over various other proposals which have been submitted and discarded by those in authority during the last fourteen years.

At 151st Street and Broadway the present double track is carried in a tunnel, the top of which is some twenty-two feet below the surface of the street. A station at this point could be secured only by a considerable amount of very costly and difficult construction but, after completion, access to the station platforms would be secured only by walking up and down some sixty steps, or four flights of stairs of fifteen steps each. The physical feat of climbing up or down such flights of stairs would tax the strength of those who now find the walk to 145th or 157th Street a considerable undertaking.

There are other physical reasons against the construction of the station, but the operating reasons are more important than all.

The additional station at 151st Street would mean an additional stop to all trains, both local and express, which would mean a very considerable impairment of service upon lines already crowded to capacity during rush hours.

I think a sufficient answer to the communication of the Hamilton Community Council would be for the Secretary of the Board to forward a letter and include therewith a copy of this report."

Thereafter under date of June 9, 1922, the application in question was referred to the Transit Commission by the Secretary of the Board of Estimate and Apportionment.

On June 13, 1922, the Commission adopted a hearing order directing that a hearing be held in this matter on June 26, 1922. A hearing was held on that date and on July 12, 1922, when the hearings were closed, following which on July 18, 1922, the Order and Report and Opinion set forth below were adopted and approved respectively.

ORDER DENYING APPLICATION

The Hamilton Community Council having by communication, dated May 11, 1922, addressed to the Board of Estimate and Apportionment of The City of New York, which communication was referred to this Commission by that Board under date of June 9, 1922, made application for a new subway station located at 151st Street and Broadway; and the Commission having by Order, dated June 13, 1922, directed that a hearing be held on said application and designated and certified James B. Walker, Secretary of the Commission to conduct said hearing and take the testimony and report the same to the Commission together with his opinion thereon; and hearings having been duly held before the said Secretary on June 26th and July 12th, 1922, and said Secretary having rendered his report and opinion, dated July 17, 1922, wherein he finds and recommends that the Commission should deny said application.

Ordered that the application of the Hamilton Community Council, dated May 11, 1922, for a new subway station located at 151st Street and Broadway, be and the same hereby is in all respects denied.

REPORT AND OPINION

WALKER, *Secretary*: I, JAMES B. WALKER, Secretary to the Commission, designated and authorized by order of the Commission dated June 13, 1922, to conduct the hearing herein and to take testimony and report the same to the Commission with my opinion thereon for its decision and determination, do hereby report as follows:

This is an application by the Hamilton Community Council, a civic organization composed of residents of the Washington Heights section of Manhattan, for the installation of a subway station at 151st Street on the Broadway line of the Interborough Rapid Transit Company. The two stations south and north of the proposed additional station are respectively located at 145th Street and 157th Street and Broadway, 12 blocks apart. The proposed station would be midway between the two, or six blocks from either.

This proposal was considered by the Public Service Commission more than once since the year 1908 when it was first broached. The Public Service Commission, upon the advice of its engineers, invariably declined to entertain the application. The Transit Commission, however, ordered a hearing and considerable testimony has been taken.

The argument in favor of the station reduces itself to the simple proposition that certain persons have to walk a distance which it

takes twelve or fifteen minutes to cover to reach either the 145th or the 157th Street Stations. Among them are persons living east of Amsterdam Avenue. They would undoubtedly be inconvenienced by the establishment of the proposed station. The neighborhood is now well populated and there is a certain congestion of traffic in the existing subway stations during the rush hours. The persons who have to walk about fifteen minutes to one of the subway stations are, however, within a much shorter walk of the elevated railroad stations on the Ninth Avenue Line.

It is an elementary fact in rapid transit that the more stations there are, the slower the transit is. The Commission must look at the question from the point of view of all the patrons of the line rather than that of the passengers coming from a certain section. If a station is put in at 151st Street, there is no good reason why stations should not be installed at other points where existing stations are equally widely separated, and the result would be a station every six or seven blocks with a consequent retardation of traffic.

There seems to be no question that the station would cost somewhere between \$600,000 and \$700,000, without taking into consideration the probable cost of an escalator which would be required because of the depth of the proposed station. It was suggested at one of the hearings that installing the station at 150th Street instead of 151st Street would be less expensive, on account of the difference in depth of about ten feet, but the difference would be less than \$50,000, which is comparatively negligible.

In view of the plans of the Commission for rapid transit development which will serve the Washington Heights section of the city, the expenditure of \$600,000 or \$650,000 for the installation of an additional station at 150th or 151st Street would hardly be justified. The projected subway up Eighth Avenue and Amsterdam Avenue and the projected extension of the B.R.T. Broadway Subway up Central Park West and into the Washington Heights section will provide such additional facilities as to relieve congestion on the present lines, and when that is done the need for a station between 145th and 157th Streets on the Broadway Line will be largely if not wholly done away with.

Reports of fare collections at the stations on the Broadway Line do not indicate that the stations at 145th and 157th Streets are more overcrowded than those at other points. For instance, the number

of fares collected for the month of May, 1922, at the stations in question and at one station on either side was as follows:

137th Street	451,279
145th Street	365,406
157th Street	471,485
168th Street	319,300

These figures show that the number of passengers using the 157th Street Station during the month of May was only about 20,000 in excess of those using the 137th Street Station, and that the traffic at the 145th Street Station was about 86,000 below that of the 137th Street Station.

The reports of the Transit Commission engineers and of the assistant engineer of the Board of Estimate and Apportionment state that the proposed station would be costly and difficult of construction; that it would mean an additional stop to all trains, thereby considerably retarding the service. The Chief Engineer of the Transit Commission states in his report that the tendency of modern rapid transit construction, especially in residential districts, is to restrict the number of stations to about two per mile, which makes for better train service as a whole. He points out that if a station were constructed at 151st Street, it would be consistent to build stations at 122nd Street, 162nd Street and 175th Street on upper Broadway, as well as at other points of the rapid transit system.

The Commission is always in favor of giving desirable transportation accommodations to the public, but in so doing it must always take into consideration the principle of the greatest good to the greatest number. Doubtless it would be a convenience to persons residing within a certain radius of the proposed station to have it installed, but after considering the evidence, the unanimous opinion of the engineers of the Transit Commission and of the Board of Estimate and Apportionment, and in view of the plans for the future construction of rapid transit lines, I am forced to the conclusion that the proposed station would inconvenience a larger number of people than it would accommodate, and that the expense of installing it would not be warranted by the convenience which it would offer.

I therefore recommend that the application be denied.

In the Matter of the Hearing on the Motion of the Commission as to the proposed new Local Passenger Tariff of the New York,

WESTCHESTER & BOSTON RAILWAY COMPANY identified as P.S.C. 1 N.Y., No. 18, issued October 18, 1919 and effective November 19, 1919.

CASE No. 2433

Fares—Steam Railroad Corporation—Petition of City of New York for Rehearing—Petition Presents Nothing that was not Before This Commission or its Predecessors—Petition Denied—Corporation Counsel Relegated to Method of Procedure Provided by Statute.—The petition of the Corporation Counsel is devoted almost wholly to a statement of conclusions, and presents nothing that was not before this Commission or its predecessor, the Public Service Commission for the First District, upon the original hearings. As, therefore, the matters alleged in the petition have already been considered by the Commission, and as they are not sustained by any proof of facts, the petition for a rehearing should be denied, and the Corporation Counsel relegated to the method of procedure provided by statute. If there be any substantial points to be presented in contravention of the findings of the Commission, or of its judgment previously entered, they can be readily presented to the Appellate Division, and any legal question remaining in issue promptly and decisively settled.

Denial Order entered and Memorandum approved July 25, 1922.

In this proceeding the Board of Estimate and Apportionment of The City of New York, adopted on June 23, 1922, the following Resolution:

“Resolved, That the Corporation Counsel be and he is hereby requested to take every available step to challenge the right of the New York, Westchester and Boston Railway Company to go through with this fare increase between stations in The City of New York, from five (5) to seven (7) cents.

Following which on July 5, 1922, the following petition dated June 30, 1922, and verified July 5, 1922, was filed with the Commission:

PETITION FOR REHEARING

To the Transit Commission of the State of New York:

On the 2nd day of May, 1922, the Commission made an order in the above-entitled proceeding, reading in part as follows:

“Ordered

(1) That said increase from five to seven cents in the rates between stations in The City of New York be allowed and that the same be and hereby is fixed as the maximum rate, fare and charge between the stations to be observed by the said New York, Westchester & Boston Railway Company within The City of New York.

(2) That this order shall take effect immediately and shall continue in force until changed or abrogated by further order of the Commission.

(3) That permission be and the same hereby is granted to the New York, Westchester & Boston Railway Company to issue, file

and put into effect on May 15, 1922, revised sheets to its Local Passenger Tariff schedule, identified as P.S.C.—1 N.Y. No. 18, issued October 18, 1919, showing the change from five to seven cents in its rates between stations within The City of New York; provided that for at least ten days before said schedule shall go into effect said company shall file and publish said revised schedule as required by law and shall post in each and every car operated by it in the City of New York a notice to the public announcing the date on which said change in fare from five to seven cents will take effect."

The City of New York appeals from each and every part of said order and applies to the Commission for a rehearing in respect thereto on the following grounds:

(1) That such maximum rate of seven cents was allowed and fixed by the Commission without any valuation having been made of the Company's property and without proper and adequate proof as to the revenues and operating expenses of the company within the City of New York, and without any proper and adequate proof as to the operating losses of the Company as alleged.

(2) That such maximum rate of seven cents was allowed and fixed without any investigation on the part of the Commission, its agents or officers as to whether the figures submitted by the Company purporting to show its revenues and operating expenses were correct and actually represented the amounts received and expended by the Company on that portion of its railroad within the City of New York and therefore that such rate was fixed without regard to whether the original rate of five cents was unjust and unreasonable with respect to the service furnished by the Company.

(3) That such maximum rate of seven cents was allowed and fixed by the Commission without regard to a reasonable average return upon the value of the property actually used in the Public Service and the necessity of making reservation out of income for surplus and contingencies.

(4) That the Company failed to meet the burden placed upon it by Section 29 of the Public Service Commission's law to wit:—to show that the increase in rate is just and reasonable.

(5) That the final hearings in said above proceeding were closed on June 29, 1921, and the most recent figure submitted by the Company in that proceeding purported to show the results of operation down to April 30, 1921.

That since said date it is common knowledge that the prices of materials and labor have materially decreased and that therefore the order in this proceeding not having been made until May 2d, 1922, over one year after the period covered in the hearings, the same was based upon conditions and facts not in existence at the time such order was made.

For the foregoing reasons, the City asks that a rehearing be had in the above-entitled proceeding and that the order of May 2, 1922, be set aside and rescinded unless the Company shall in such re-opened proceeding present such proper and adequate proof as will justify any increase in its rates at this time.

This application is made without waiving and without prejudice to any claim heretofore made or which may be hereafter made by the City, that Chapter 134 Laws of 1921 is unconstitutional and void.

Respectfully submitted,

THE CITY OF NEW YORK,

By: JOHN P. O'BRIEN,

Corporation Counsel.

Thereafter, the Commission on July 25, 1922, adopted a Denial Order as follows, and approved the Memorandum set forth below:

DENIAL ORDER

The Commission having made an Order in this proceeding on or about May 2, 1922, and The City of New York, by John P. O'Brien, Corporation Counsel, having applied to the Commission by petition, dated June 30, 1922, and verified July 5, 1922, for a rehearing and in the judgment of the Commission there appearing to be no sufficient reason for such rehearing, now therefore it is

Ordered that the application of The City of New York as aforesaid, for a rehearing be and the same hereby is denied.

Further Ordered that this Order take effect immediately.

MEMORANDUM

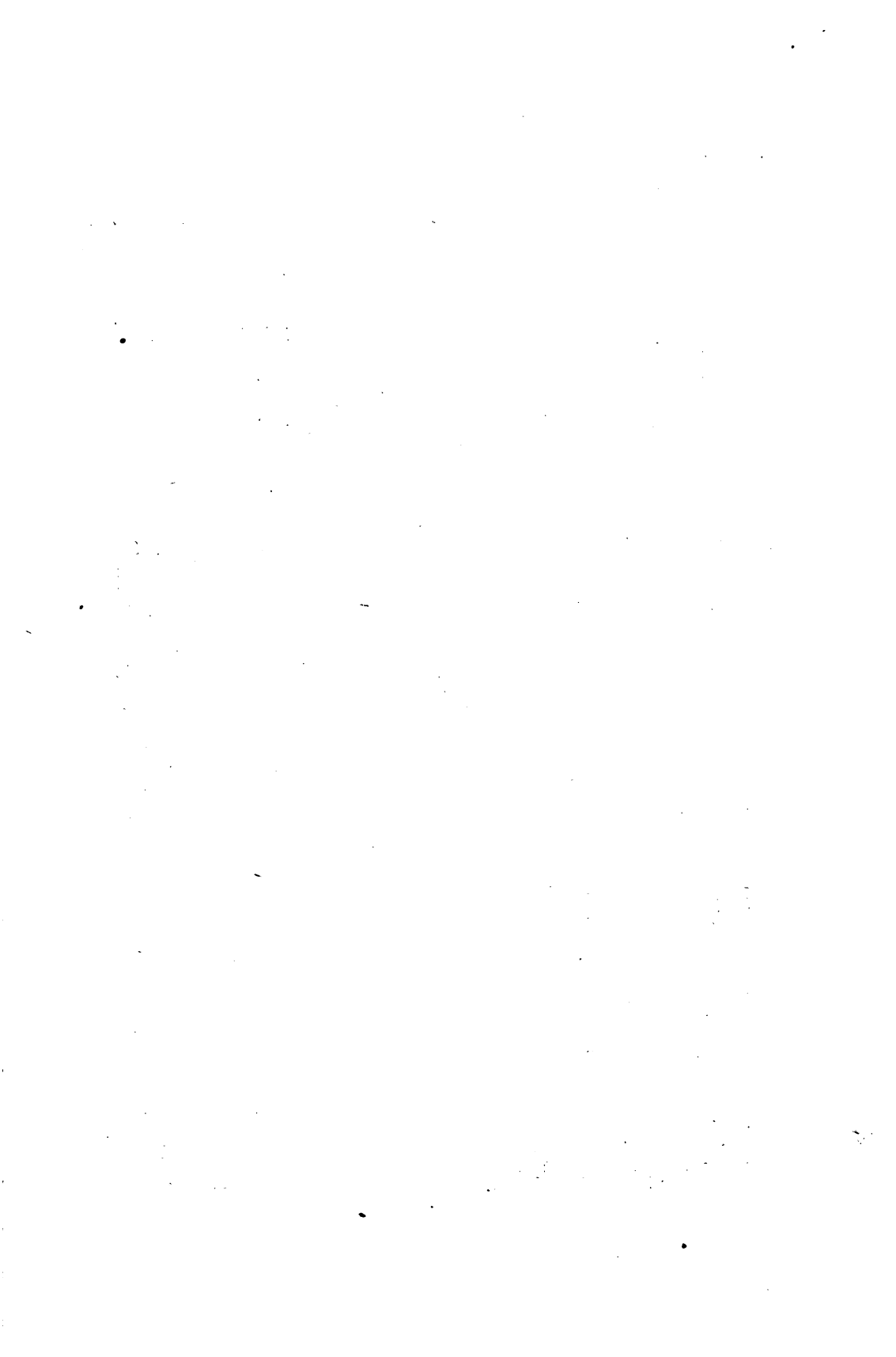
BY THE COMMISSION: The petition of the Corporation Counsel is devoted almost wholly to a statement of conclusions, and presents nothing that was not before this Commission or its predecessor, the Public Service Commission for the First District, upon the original hearings.

It is claimed as one of the grounds urged for a rehearing that a considerable period of time elapsed between the hearing last held and the date upon which the order was issued, and that a substantial change in the financial situation of the company had taken place in the meantime. The files of the Commission, however, will show that shortly before the date of its final order, upon the direction of the Commission, a re-examination of the situation of the company was made by Counsel to the Commission, and by its Chief of Accounts. Both reported that nothing had occurred in the operating or financial condition of the company to justify any change in the findings expressed in the report of Colonel Kingsbury, the Commission's former Counsel, who presided at the hearings.

As, therefore, the matters alleged in the petition have already been considered by the Commission, and as they are not sustained by any proof of facts, the petition for a rehearing should be denied, and the Corporation Counsel relegated to the method of procedure provided by statute. If there be any substantial points to be presented in contravention of the findings of the Commission, or of its judgment previously entered, they can be readily presented to the Appellate Division, and any legal question remaining in issue promptly and decisively settled.

It is perhaps unnecessary to repeat that the position of the New York, Westchester and Boston Railway Company is not analogous

to that of an ordinary rapid transit company ; that it is a line carrying traffic originating at points outside the city line, some of them distant ; and that the rates of fare now permitted to be charged between stations wholly within the city are considerably lower than those charged for corresponding distances upon any of the other steam or electric lines entering the city and carrying passengers between intermediate points within the city. These are considerations that have been recognized not only by the transit authorities, but by the courts—particularly by the Court of Appeals when the direction was given to the Transit Commission to allow an adjustment of fare based upon the company's right to relief.



In the Matter of the Application of THE LONG ISLAND RAILROAD COMPANY and the PENNSYLVANIA TUNNEL AND TERMINAL RAILROAD COMPANY, for the approval by the PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT of (1) an agreement dated May 26, 1920, amending the agreement dated June 24, 1912, between the PENNSYLVANIA TUNNEL AND TERMINAL RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, as operating agent for the Tunnel Company, and THE LONG ISLAND RAILROAD COMPANY, for trackage rights into and the use of the Pennsylvania Station, Borough of Manhattan, etc., and (2) an extension of said agreement of June 24, 1912, as amended, from July 1, 1920, to July 1, 1922.

CASE No. 2511

Terminal Facilities—Steam Railroad Corporations—Application for Approval of Supplementary Agreement for use of Pennsylvania Station.—The Long Island Railroad Company and the Pennsylvania Tunnel and Terminal Railroad Company, by petition dated April 21, 1922, applied to the Commission for its approval of a supplemental agreement dated April 20, 1922, which extends until July 1, 1924, an agreement dated June 24, 1912, as amended, between said companies. The last mentioned agreement provides for the operation of Long Island trains into the Pennsylvania terminal of The City of New York.

Terminal Facilities—Steam Railroad Corporations—Question which Causes Hesitation to Approve Agreement—Rental Progressively Raised.—The only question which causes hesitation in the approval of the proposed extension agreement which is the subject of this application is the increase in the rental paid for station facilities. By several agreements supplemental to the original one of June 24, 1912, all of which were approved by the Public Service Commission, this rental was progressively raised from the original \$13,000 per month to \$20,000 per month where it now stands. The agreement offered for approval raises it to \$25,000 per month.

Terminal Facilities—Steam Railroad Corporations—Traffic Figures—Increased Rental not Proportionately as Great as Increased Traffic.—The traffic of the Long Island Railroad Company into the Pennsylvania Station has very greatly increased since 1912. In 1912 (disregarding odd figures) there were 4,000,000 Pennsylvania passengers and 7,700,000 Long Island passengers into the Pennsylvania Station. In 1919, there were 11,500,000 Pennsylvania passengers and 19,800,000 Long Island passengers. In 1921, there were 11,000,000 Pennsylvania passengers and 25,900,000 Long Island passengers into the Pennsylvania station. If we figure the proposed new rental on a basis per Long Island passenger, it is readily seen that the latter is less than it was in the original agreement. Stating the proposition in terms of annual rent and passengers: 1912: rent \$156,000; passengers 7,700,000; 1922: rent \$300,000; passengers 25,900,000. The rent has doubled, the passengers tripled. So that the increase of rental is not proportionately as great as the increase of traffic.

Terminal Facilities—Steam Railroad Corporations—Rental Fixed under New Agreement not Exorbitant—Long Island Company must Ultimately have Added Facilities in Pennsylvania Terminal—Ability and

Willingness to Pay matter of Good Policy.—It cannot be seen that the total rental as fixed under the new agreement at \$300,000 a year or \$25,000 per month is exorbitant or that it is other than a moderate and reasonable price to be paid for the facilities afforded. The Long Island Railroad must ultimately have added facilities in the Pennsylvania terminal and these it can best demand by showing ability and willingness to pay for them. Obviously it is a matter of good policy for the Long Island Railroad Company.

Terminal Facilities—Steam Railroad Corporations—Conclusion Reached in this Case not to be Regarded as Precedent—Commission to Scrutinize Future Applications as Done in Present Case to Assure Fairness to all Parties Concerned—Recommendation.—The companies concerned in this application must bear in mind that the conclusion reached in this case is not to be regarded as a precedent, and that the Commission will in the event of future applications of this character scrutinize, as it has done in the present case, all the facts and circumstances as well as the intercorporate relations, to assure itself that any rental sought to be approved by it is fair to all the parties concerned and such as the renting corporation can afford to pay without injury to the interests of its passengers. Recommended: That the present application be granted and consequently that the agreement dated April 12, 1922 be approved by the Commission.

Hearings closed June 27, 1922. Order adopted and report and opinion approved August 23, 1922.

This matter came before the Commission upon receipt of the following petition of The Long Island Railroad Company by Ralph Peters, President, and the Pennsylvania Tunnel and Terminal Railroad Company by A. J. County, Vice President, dated April 20, 1922:

PETITION

The Long Island Railroad Company and the Pennsylvania Tunnel and Terminal Railroad Company, by this, their petition, respectfully show:

1. That your petitioner, The Long Island Railroad Company, is a domestic railroad corporation of the State of New York, organized and existing pursuant to Chapter 178 of the Laws of 1834, and operates its several lines, branches and divisions of railroad throughout Long Island generally.

2. That your petitioner, the Pennsylvania Tunnel and Terminal Railroad Company is a domestic railroad corporation, organized and existing under the laws of the States of New York and New Jersey, and is the owner of a railroad extending from Harrison, N. J., to and through New York City, to Sunnyside Yard, Borough of Queens, including said Yard and also the station at Seventh Avenue and Thirty-second Street, in the Borough of Manhattan, New York City, known as "Pennsylvania Station," which railroad, and its station, yards and appurtenances, are maintained and operated for said Pennsylvania Tunnel and Terminal Railroad Company by The Pennsylvania Railroad Company as agent.

3. That your petitioners are informed and believe that the facts of the incorporation and status of said Pennsylvania Tunnel and Terminal Railroad Company are set forth in a petition dated July 11, 1910, and duly filed with your Commission. In said petition reference is made to a list of documents enumerated in Exhibit "A" thereto annexed, certified copies of which papers and documents were duly filed with your Commission on September 20, 1907. Your petitioners pray leave to refer to said petition, papers and documents as part of this petition.

4. That your petitioner, The Long Island Railroad Company, has connected its railroad, near Harold Avenue, in Sunnyside Yard, Borough

of Queens, with the railroad so owned and operated by the Pennsylvania Companies as aforesaid, and now uses that portion of said railroad between said point of connection and Pennsylvania Station, including said Station and Sunnyside Yard and the facilities and appurtenances thereon, to the extent set forth in said agreement dated June 24, 1912, between the Pennsylvania Tunnel and Terminal Railroad Company, The Pennsylvania Railroad Company and The Long Island Railroad Company, a copy of which agreement is on file with your Honorable Commission in Case No. 2208, to which reference is hereby respectfully made.

5. On or about the eighteenth day of October, 1912, on petition of The Long Island Railroad Company and the Pennsylvania Tunnel and Terminal Railroad Company, your Honorable Commission approved said agreement of June 24, 1912 for a term of one year, from July 1, 1912, to July 1, 1913, and thereafter approved of extensions of said agreement, the last thereof being for a further term of two years, from July 1, 1920, to July 1, 1922, and in the resolution granting such approval (Case No. 2511, dated July 1, 1920) your Honorable Commission provided that if said agreement is continued in force and effect after July 1, 1922, the said Companies shall make application for the further approval thereof. Said resolution of the Commission of July 1, 1920, also included approval of a supplemental agreement dated May 26, 1920, between the parties, increasing the rental payable by The Long Island Railroad Company under said agreement of June 24, 1912.

6. The said agreement of June 24, 1912, as amended under date of May 26, 1920, being entirely satisfactory from the standpoint of all parties hereto, except as covered by a further supplemental agreement entered into by the parties dated April 20, 1922, i.e., that the fixed charge to be paid by The Long Island Railroad Company as rental for such trackage rights into and the use of Pennsylvania Station, including Sunnyside Yard, shall, effective as of July 1, 1922, be increased from \$20,000 to \$25,000, per month, it is desired by your petitioners to continue same in force, as so amended, beyond the limit prescribed by your Honorable Commission, namely, July 1, 1922. A copy of said supplemental agreement of April 20, 1922, duly certified as being a true and correct copy of the original, is hereto annexed and made a part hereof marked Exhibit "A".

Wherefore, your petitioners pray that your Honorable Commission approve of the said supplemental agreement of April 20, 1922, and the extension of said agreement of June 24, 1912, as amended, until July 1, 1924.

On May 17, 1922, the Commission ordered this entire matter referred to Commissioner Harkness. Thereafter, Lincoln C. Andrews, Chief Executive Officer was directed to hold an informal hearing upon the companies' petition on June 1, 1922. The hearing was held on that date and adjourned subject to call. Later it was continued on June 20, 1922. On August 23, 1922, the following Order was adopted by the Commission and the report and Opinion set forth below, approved.

APPROVAL ORDER

The Long Island Railroad Company and the Pennsylvania Tunnel and Terminal Railroad Company having by joint petition dated April 21, 1922, made application to the Commission for approval of an agreement dated April 20, 1922, between said companies and the Pennsylvania Railroad Company, operating, as agent, the railroad and property of the said Tunnel Company; said agreement modifying a certain agreement between the said companies dated

June 24, 1912; granting The Long Island Railroad Company trackage rights over the railroad of the Pennsylvania Tunnel and Terminal Railroad Company, between Sunnyside Yard, Long Island and Pennsylvania Station and certain station facilities in said Pennsylvania Station and the extensions and modifications of said contract dated June 24, 1912, as authorized from time to time by the Public Service Commission; said agreement dated April 20, 1922, providing for an increase in the monthly rental paid by the Long Island Railroad Company to the Pennsylvania Tunnel and Terminal Railroad Company from \$20,000 to \$25,000 per month, and the Chief Executive Officer of the Commission having, after public hearings duly held and by his report and opinion dated August 15, 1922, recommended that the said agreement dated April 20, 1922 be approved, and said report and opinion of the Chief Executive Officer having been duly approved, it is

Ordered that the said agreement dated April 20, 1922, between The Long Island Railroad Company, the Pennsylvania Tunnel and Terminal Railroad Company and the Pennsylvania Railroad Company, providing for an increase in the monthly rental paid by the said Long Island Railroad Company to the said Pennsylvania Tunnel and Terminal Railroad Company from \$20,000 per month to \$25,000 per month be and the same hereby is approved.

REPORT AND OPINION

ANDREWS, *Chief Executive Officer*: I, Lincoln C. Andrews, Chief Executive Officer, designated and authorized by the Commission to conduct the hearing herein, do hereby report as follows:

The Long Island Railroad Company and the Pennsylvania Tunnel and Terminal Railroad Company, by petition dated April 21, 1922, applied to the Commission for its approval of a supplemental agreement dated April 20, 1922, which extends until July 1, 1924 an agreement dated June 24, 1912, as amended, between said companies.

The last mentioned agreement provides for the operation of Long Island trains into the Pennsylvania terminal of The City of New York. Under it the Long Island Railroad exercises trackage rights in the Sunnyside Yard in Long Island City and the tracks connecting the Long Island Railroad with the Pennsylvania station and also has the use of certain portions of the Pennsylvania station. The cost of operation of the yard, tracks, etc., is apportioned between the Pennsylvania Tunnel and Terminal Company and the Long Island Railroad Company on the basis of the number of cars passing over certain specified sections of the track. In addition thereto the original agreement provided for a fixed rental of \$13,000 per month for the use of the station facilities by the Long Island Railroad Company and its passengers. Another item of the agreement was a rental based on interest of the cost of the power plant in Long Island City and the substation and distributing system.

I deem it unnecessary to go into the detailed evidence as to cost of operation and number of cars furnished upon the hearing. The only question which causes hesitation in the approval of the proposed extension agreement which is the subject of this application is the increase in the rental paid for station facilities. By several agreements supplemental to the original one of June 24, 1912, all of which were approved by the Public Service Commission, this rental was progressively raised from the original \$13,000 per month to \$20,000 per month where it now stands. The agreement offered for approval raises it to \$25,000 a month. The sum was arbitrarily fixed in the original agreement. There appears to be no basis for an exact calculation of what the fair rental for the station facilities used by the Long Island and its passengers in the Pennsylvania station would be. It is not satisfactory to apportion the rental on the basis of a fair return on the cost of the station facilities used, because a large part of the use by Long Island passengers is by commuters who merely pass through the station. Again, the Pennsylvania railroad does not at present use the whole of the station and it would be for its advantage to rent surplus accommodations for such rates as it could get even though they might be below a fair return on the investment. I do not see any fair means of fixing a rental to the Long Island Railroad on the basis of a comparison between the numbers of passengers carried into the station by the various roads using it.

So far as the ability of the Long Island Railroad Company to pay a rental now proposed to be increased \$50,000 a year, it is no more able to pay an increased rental at the present time than it has been in the past, if ability to pay rental is to be determined by the profit or loss of its operation. The Long Island Railroad Company as is well known, has operated at a deficit for many years past and in view of the large accumulated deficit, ability to pay more rental cannot be argued from the mere fact of increased income in recent months.

It is, however, amply demonstrated by Exhibits 1 and 2 that the traffic of the Long Island Railroad Company into the Pennsylvania station has very greatly increased since 1912. In 1912 (disregarding odd figures) there were 4,000,000 Pennsylvania passengers and 7,700,000 Long Island passengers into the Pennsylvania Station. In 1919, there were 11,500,000 Pennsylvania passengers and 19,800,000 Long Island passengers. In 1921 there were 11,000,000 Pennsylvania passengers and 25,900,000 Long Island passengers into the

Pennsylvania station. If we figure the proposed new rental on a basis per Long Island passenger, it is readily seen that the latter is less than it was in the original agreement. Stating the proposition in terms of annual rent and passengers: 1912; rent \$155,000; passengers 7,700,000: 1922; rent \$300,000; passengers 25,900,000. The rent has doubled, the passengers tripled. So that the increase of rental is not proportionately as great as the increase of traffic.

It is to be sure an arbitrary increase; but the original figure was equally arbitrary. One of the witnesses called by the Commission testified that it costs the New York, New Haven & Hartford Railroad Company approximately 36c for each passenger carried into the Grand Central terminal in one direction or 72c for the round trip. Without going into minute calculations, this is very much more on a per passenger basis than the new rental to be paid by the Long Island Railroad Company to the Pennsylvania Tunnel and Terminal Company. It was agreed that the actual figure of the latter is in the neighborhood of 6c per passenger. The increase of \$60,000 per year distributed over about 25,900,000 passengers would be only about a quarter of a cent per passenger, which could not have any possible influence on the rate of either commutation or trip fares.

True, the Long Island Railroad Company in paying the increased rent increases its expenses and consequently has less money to apply to the many improvements which it needs, but no one will dispute the proposition that it could not by any possibility procure terminal facilities in the Borough of Manhattan for any such price as it now pays for the use of the Pennsylvania station; so that from one point of view the arrangement is an economical and desirable one.

Therefore I cannot see that the total rental as fixed under the new agreement at \$300,000 a year or \$25,000 per month is exorbitant or that it is other than a moderate and reasonable price to be paid for the facilities afforded. The Long Island Railroad must ultimately have added facilities in the Pennsylvania terminal and these it can best demand by showing ability and willingness to pay for them. Obviously it is a matter of good policy for the Long Island Railroad Company.

But it must be borne in mind, particularly with reference to future applications for an increase of rental, that like any proposition between tenant and landlord, there must be taken into consideration not only the accommodations which the landlord offers, but the facilities which the tenant can afford. Just as when one rents a house he must

take into consideration his other expenses for the necessities of life and arrange his budget so that he does not pay an undue proportion of his income for rent, so the Commission in considering future applications must see that the Long Island Railroad Company does not pay more than it can properly afford to devote to its terminal facilities. It must reserve a due proportion of its income for the many improvements to its tracks and equipment that are so badly needed and should not ask the Commission to approve increases of rent of this character *ad libitum*. If the rent demanded by the Pennsylvania Tunnel and Terminal Company for the Pennsylvania station facilities and acquiesced in by the Long Island Railroad were excessive for any reason, it would justly give rise to the suspicion of unfairness. Where there is intercorporate ownership of railroad companies, the Commission must carefully scrutinize transactions of this character to see that there is not an attempt to enrich one railroad corporation at the expense of another. I find nothing before the Commission to indicate anything of this sort in the present case; in fact the Pennsylvania Railroad Company has recently reduced its dividend from 6% to 4% and \$60,000 is a trifling item in the revenues of this company, particularly if we consider the great sums which the Pennsylvania Railroad Company has devoted to the improvement of the Long Island Railroad; but the companies concerned in this application must bear in mind that the conclusion reached in this case is not to be regarded as a precedent, and that the Commission will in the event of future applications of this character scrutinize, as it has done in the present case, all the facts and circumstances as well as the intercorporate relations, to assure itself that any rental sought to be approved by it is fair to all the parties concerned and such as the renting corporation can afford to pay without injury to the interests of its passengers.

With this caution as to the future, I recommend that the present application be granted and consequently that the agreement dated April 12, 1922, be approved by the Commission.

Dated New York, August 15, 1922.

In the Matter of the Hearing on motion of the Commission upon the regulations, practices, equipment, appliances and service, maintained and provided by Interborough Rapid Transit Company and the Manhattan Railway Company.

CASE No. 2637

Service—Manhattan Elevated Railroads—Overloading Much Less Marked—27,000,000 Less Fare Passengers over Year Ending June, 1921.—The overloading on the Manhattan elevated lines is much less marked at all periods of the day except at the height of the rush hour when all transportation facilities in the city are taxed to capacity than is the case with the subway division. During the fiscal year ending June 30, 1922, there were approximately 27,000,000 less fare passengers carried on the elevated division than for the fiscal year ending June 30, 1921.

Service—Manhattan Elevated Railroads—Trouble with Service—Re-adjustment Taken Up Informally with Operating Officials of Company and Chief Executive Officer of Commission.—As was stated from the bench in the course of these hearings, the trouble with the Manhattan elevated service is largely the defective adjustment of the existing equipment and car mileage operating to the hourly fluctuations in travel. This matter of readjustment was taken up informally by the operating officials of the company with the Chief Executive Officer of the Commission, and it is believed that in cooperation they can do much to improve conditions.

Service—Manhattan Elevated Railroads—Recommendations.—Recommended that no formal service be adopted in this case (No. 2637) at this time but that the matter of service on the Manhattan elevated be referred to the Chief Executive Officer with power to require on behalf of the Commission such service as will be adequate to meet the traffic requirements on the lines in question and that pending the results of such reference the case remain open and formal action by the Commission held in abeyance.

Opinion approved September 27, 1922.

This case came before the Commission in connection with its general investigation of service and equipment on all rapid transit lines both subway and elevated in the greater City of New York. The hearing order in this particular case was adopted May 4, 1922, and the date of the first hearing fixed for May 15, 1922. Thereafter, a number of hearings were held in the matter and a thorough investigation made of the elevated lines under consideration. Following which the opinion below was approved. Further facts as to this case are stated in the opinion.

OPINION

HARKNESS, *Commissioner*: This proceeding was instituted by hearing order adopted May 4, 1922, under Section 49 of the Public Service Commission Law to inquire into the regulations, practices, equipment, appliances and service maintained and provided by the Interborough Rapid Transit Company on the elevated lines of the Manhattan Railway Company in the transportation of persons and property in the City of New York. It is one of seventeen separate proceedings instituting similar inquiries in respect to all common carriers under the jurisdiction of the Commission whether subway, elevated or surface.

The proceedings under the Commission's Cases Nos. 2627 and 2628, upon the service and equipment maintained and provided by the Interborough Rapid Transit Company on its subway lines and by the New York Consolidated Railroad Company and the New York Municipal Railway Corporation on their subway and elevated lines, respectively, resulted in elaborate service orders adopted by the Commission on May 2, 1922 and July 13, 1922, respectively. These orders require periodic substantial increases in the service totalling an increase of approximately forty per cent in the service provided by the said companies when the said inquiries were instituted. The Orders further require the acquisition by the said companies of additional equipment which will enable them to provide the required service.

The evidence adduced at the hearings in this proceeding held on May 17th, 24th and 31st, 1922, making a record of 177 pages of printed testimony and 33 exhibits, reflect a quite different situation from that developed at the hearings already referred to.

The overloading on the Manhattan elevated lines is much less marked at all periods of the day, except at the height of the rush hour when all transportation facilities in the city are taxed to capacity, than is the case with the subway division. During the fiscal year ending June 30, 1922, there were approximately 27,000,000 less fare passengers carried on the elevated division than for the fiscal year ending June 30, 1921.

As I stated from the bench in the course of these hearings, the trouble with the Manhattan elevated service is largely the defective adjustment of the existing equipment and car mileage operated to the hourly fluctuations in travel. This matter of readjustment was

taken up informally by the operating officials of the company with the Chief Executive Officer of the Commission, and I believe that in co-operation they can do much to improve conditions.

In view of all these circumstances, it is my opinion and I recommend that the Commission do not adopt a formal service order in this proceeding as was done in Cases Nos. 2627 and 2628 but that the procedure followed here, namely, that the matter of service on the elevated division be referred to the Chief Executive Officer of the Commission with power to require such increases as the traffic checks made by the bureaus under his supervision indicate to be necessary to provide the standard of service which the Commission has required by formal order in the cases of the subway lines in Manhattan and the subway and elevated lines in Brooklyn.

I therefore recommend that no formal service order be adopted in this case (No. 2637) at this time but that the matter of service on the Manhattan elevated be referred to the Chief Executive Officer with power to require on behalf of the Commission such service as will be adequate to meet the traffic requirements on the lines in question and that pending the results of such reference the case remain open and formal action by the Commission held in obedience.

Dated, September 26, 1922.

In the Matter of the Application of the Board of Estimate and Apportionment of The City of New York, for an order directing **THE BROOKLYN CITY RAILROAD COMPANY** to change the location of its tracks in Fresh Pond Road between Woodbine Street and Mount Olivet Avenue, in the Borough of Queens.

CASE No. 2631

Relocation of Track—Street Surface Railroad—Commission's First Decision in Case—City's Application for Rehearing—At Original Hearing No Evidence Produced to Show Proposed Relocation Would Benefit Railroad—Upon Rehearing Such Evidence was Introduced.—In the Commission's first decision in this case, namely, on May 11, 1922, it fixed as the sum the city should pay to the railroad company for the relocation of the tracks in question that of \$11,420. On the basis that the Commission was allocating to the City the total cost of the relocation of tracks the City requested a rehearing which was granted and held on October 11, 1922. At the original hearings the City presented no evidence whatever to show that the proposed relocation would in any way benefit the operation of the railroad or be of any benefit to the car riders. At the rehearing it introduced evidence to show that the road would benefit materially from having its tracks straightened and slightly shortened and placed in the centre of a wide, properly graded, paved and drained street.

Relocation of Track—Street Surface Railroad—Position of Company Stumbling Block to Prompt Results—Statute Fails to Provide Method by Which Company Can Enforce Payment from City—Commission's Position.—This case has had a long and difficult history. One stumbling block to prompt results is the position of the company, positively stated on more than on occasion, that it could not accept an order unless the order provided that the City pay in advance its allotment of the cost. This is predicated on the fact that this statute provides no methods by which the company can enforce payment from the City. This puts the Commission in a position of either meeting this condition or having to resort to the Courts with continued delay for another indefinite period.

Relocation of Track—Street Surface Railroad—No Agreed Basis on Which to Estimate Cost of Work—Fair Basis Agreed Upon—In Reality Railroad Company Contemplates Building an Entirely New Track—Cause for Different Basis of Estimates.—In an effort to meet this situation the hearing was adjourned and a conference arranged with representatives of the City, the Railroad Company and the Commission attending. At this conference it became clear that the difficulty lay in the fact that in the previous hearings there had been no agreed basis on which the estimates of cost were made. Each engineer had figured them on his own basis, no two alike. It was therefore agreed that the first necessity was to arrive at a uniform understanding of what this basis should be, and in the end unanimously agreed that the only fair basis on which it could be figured would be to assume that the railroad would literally obey an order to take up its existing tracks and put them down again in the new site. In reality, the railroad contemplates building an entirely new improved track with heavier rails in the new site, and it was this fact and an effort to analyze costs of relocation in connection with the installation of entirely new track that had caused the different bases of estimates and the widely different results.

Relocation of Track—Street Surface Railroad—Agreement That \$24,000 was Fair Estimate of Cost of Hypothetical Relocation—Opinion that

Amount Stated Represents Cost to Railroad of Carrying Out Commission's Order.—Having accepted the above hypothetical basis for an estimate the engineers in conference went over in detail the items of cost involved in this hypothetical relocation and in the end agreed that a total of \$24,000 was a very fair estimate in this case. The opinion is expressed that the amount of \$24,000 represents as accurately as it is possible to arrive at any definite figure, the cost to the railroad of carrying out the order of the Commission to relocate its tracks in the center of the new improved road.

Relocation of Track—Street Surface Railroad—Allocation of Cost of Work—Impossible to Determine Exact Measure of Benefits Accruing to Railroad and to City—Expenditures of City and Railroad—Fairest Allocation That Can Be Made Will Be to Divide Cost Equally Between Railroad and City—Recommendation.—As to the matter of allocation of this cost between the City and the road, this special Act of the Legislature imposes upon the Commission the duty of allocating this cost. It appears in this case quite impossible to determine an exact measure of benefits accruing to the railroad and to the City. In this case the railroad and the community are partners in the use of the same highway, and the proposed improvement is going to benefit both. The City is going to a great expense in grading, draining and paving this highway, and the railroad will be expending perhaps eighty or ninety thousand dollars in building in this improved highway a modern high grade track. These improvements are mutually of benefit to the community and to the railroad. It is therefore believed that without prejudice to the method of allocating these costs in any other specific case, that in this case the fairest allocation that can be made will be to divide the cost equally between the road and the City. Recommended that the Commission rescind its former order in this case and issue a new order based on a cost of \$24,000 to the railroad company to make the required relocation, and a determination that this cost shall be borne equally by the railroad and by the City, that the City shall pay to the railroad \$12,000, and that when such payment is made the railroad shall proceed with all expedition to carry out the order.

Rehearing adjourned subject to call October 18, 1922. Order adopted and report and opinion approved October 20, 1922.

This proceeding came on before the Commission upon receipt of the following resolution adopted by the Board of Estimate and Apportionment of The City of New York, July 19, 1922.

Whereas, The Board of Estimate and Apportionment, on March 10, 1922, adopted a resolution making application to the Transit Commission for an order directing the Brooklyn City Railroad Company (Brooklyn Heights Railroad Company, lessee) to change the location of its tracks in Fresh Pond Road between Woodbine Street and Mount Olivet Avenue, Borough of Queens, from their present location to the center of said Fresh Pond Road, and to determine the manner in which the cost and expense of such relocation of such railroad tracks shall be imposed and borne, in order to provide for the improvement of said Fresh Pond Road between said limits as authorized by the Board of Estimate and Apportionment on April 28, 1916; and

Whereas, Pursuant to said application the Transit Commission directed a hearing on said matter to be held on April 5, 1922, which hearing was duly held, and thereafter the said Transit Commission served upon The City of New York a certified copy of an order adopted on May 11, 1922, directing the Brooklyn City Railroad Company to change the location of its railroad tracks in Fresh Pond Road between Woodbine Street

and Mount Olivet Avenue, in the Borough of Queens, from their present location to the center of said Fresh Pond Road, which order provided that The City of New York should pay the estimated cost of removing the old track, changing the wires and poles and also the determined value of the unexpired life of such old tracks, amounting in the aggregate to \$11,420, subject to final adjustment; and

Whereas, The Brooklyn City Railroad Company will be benefited by the relocation of its tracks in the Fresh Pond Road; now therefore be it

Resolved, That the Board of Estimate and Apportionment without waiving the contention of the City that Chapter 134 of the Laws of 1921 is unconstitutional and void, hereby makes application to the Transit Commission for a rehearing in the matter of "Case No. 2631, Application of the Board of Estimate and Apportionment of The City of New York for an order directing the Brooklyn City Railroad Company to change the location of its tracks in Fresh Pond Road between Woodbine Street and Mount Olivet Avenue, in the Borough of Queens," for the purpose of obtaining a more equitable distribution of the cost of said work.

The hearing order in this proceeding was adopted September 27, 1922, and the date of rehearing set for October 11, 1922. Testimony was taken on that date and on October 18, 1922. The Order and Report and Opinion are as follows:

(For the first decision in Case No. 2631, see page 104 of this volume.)

**ORDER ABROGATING ORDER DATED MAY 11, 1922, AND DIRECTING
RELOCATION OF TRACKS AND APPORTIONMENT OF EXPENSE**

The Board of Estimate and Apportionment of The City of New York having by resolution dated March 10, 1922, made application to the Commission, pursuant to Chapter 699 of the Laws of 1921, for an order directing The Brooklyn City Railroad Company to change the location of its tracks in Fresh Pond Road between Woodbine Street and Mount Olivet Avenue in the Borough of Queens, and to determine the manner in which the cost and expense of such relocation of tracks should be imposed and borne, and hearings upon said application having been duly ordered and held and the report and opinion of Lincoln C. Andrews, Chief Executive Officer, designated to hold said hearing dated May 1, 1922, having been rendered and approved by the Commission, and an order having been entered thereupon by the Commission dated the 11th day of May, 1922, directing a change of location of said railroad tracks in said road and estimating the expense of the removal of said tracks and allocating the expense thereof;

And the Board of Estimate and Apportionment of The City of New York having thereafter by resolution adopted July 19, 1922, applied to the Transit Commission for a rehearing in this case and the Transit Commission having thereupon adopted an order dated the 27th day of September, 1922, directing a rehearing herein and authorizing and designating Lincoln C. Andrews, Chief Executive Officer, to conduct the same and report to the Commission with his opinion thereon, and hearings having been held pursuant to said order, and the Brooklyn City Railroad Company and The City of New York and the President of the Borough of Queens and the Transit Commission having appeared on said hearings by Counsel

or otherwise, and the said Chief Executive Officer having rendered his report and opinion dated October 19, 1922, and the said report and opinion having been duly approved by the Commission.

ORDERED, that the former order of the Commission herein dated May 11, 1922, be and the same is hereby rescinded and abrogated.

FURTHER ORDERED, that the cost and expense to the Brooklyn City Railroad Company of the relocation of the tracks of the Brooklyn City Railroad Company in Fresh Pond Road between Woodbine Street and Mount Olivet Avenue in the Borough of Queens from their present location to the center of said Fresh Pond Road be and the same hereby is fixed and determined at the sum of \$24,000.

FURTHER ORDERED, that the cost and expense of the location of such railroad tracks determined at the sum of \$24,000 shall be imposed and borne equally between the Brooklyn City Railroad Company and The City of New York in the proportion of 50% of such cost and expense to each.

FURTHER ORDERED, that such cost and expense of such relocation shall be imposed and borne before such relocation by the payment by The City of New York to the Brooklyn City Railroad Company of the share thereof of The City of New York, namely, \$12,000, said sum to be paid by The City of New York to the Brooklyn City Railroad Company before the latter shall be required to commence the work of said relocation and that upon the payment of said \$12,000 by The City of New York to the Brooklyn City Railroad Company, the said Brooklyn City Railroad Company shall forthwith proceed with all diligence and expedition to carry out the relocation of its railroad tracks as aforesaid.

FURTHER ORDERED, that a certified copy of this order shall be served upon the Brooklyn City Railroad Company and The City of New York in the manner prescribed by law and that within ten (10) days after the receipt of the same the said Brooklyn City Railroad Company and The City of New York shall notify the Commission in writing whether the terms hereof are accepted and will be obeyed.

REPORT AND OPINION

ANDREWS, *Chief Executive Officer*: I, Lincoln C. Andrews, Chief Executive Officer, designated and certified to conduct the rehearing herein by order of the Commission dated September 27, 1922, do hereby report as follows:

The City made application to the Transit Commission to order the Brooklyn City Railroad Company to relocate its tracks on Fresh Pond Road and to allocate the cost thereof under the provisions of Chapter 699 of the Laws of 1921. This is the first case brought under this statute, which is so written as to apply only to the Borough of Queens, City of New York.

The Executive Officer held the original hearing for the Commission and on May 11, 1922, his opinion was approved and an order made providing that the company relocate the tracks in the centre of the new road and that the City pay an estimated cost of \$11,420,

subject to adjustment in a final accounting after the work was completed.

This sum of \$11,420 represented the estimate of the Commission's engineer as to the cost to the railroad of that part of the work which should be paid for by the City. The company estimated this cost at about \$17,000, and accepted the Commission's order only with the understanding that in the final accounting the actual costs would be paid by the City.

On the basis that the Commission was allocating to the City the total cost of this relocation of tracks the City requested a rehearing which was granted, and held on October 11, 1922.

At the original hearings the City presented no evidence whatever to show that the proposed relocation would in any way benefit the operation of the railroad or be of any benefit to the car riders. At the rehearing it introduced evidence to show that the road would benefit materially from having its tracks straightened and slightly shortened and placed in the centre of a wide, properly graded, paved and drained street. Under existing conditions the railroad track paved area is necessarily used by vehicles when the unpaved portions of the road are practically impassable and these vehicles form a serious obstruction to the cars and even result in occasional derailments. The new road and wide pavement will relieve the tracks from this obstruction.

The evidence shows that the present conditions in this road are intolerable and that the project of widening and straightening and paving should be carried out without delay. The Executive Officer felt that every effort should be made to arrive at a method by which this work could be prosecuted at once. This case has had a long and difficult history. One stumbling block to prompt results is the position of the company, positively stated on more than one occasion, that it would not accept an order unless the order provided that the City pay in advance its allotment of the cost. This is predicated on the fact that this statute provides no methods by which the company can enforce payment from the City. This puts the Commission in a position of either meeting this condition or having to resort to the Courts with continued delay for another indefinite period.

In an effort to meet this situation, the hearing was adjourned and the Executive Officer attempted to get the interested parties to agree to some form of stipulation by which an order could be made in such

form as would result in the immediate prosecution of the work. The Executive Officer further arranged with Borough President Connolly that in case this failed, he would convene on Monday morning, at eleven o'clock, a conference of the engineers of the City, the railroad, and the Commission, with view to determining a definite sum which would be a fair statement of the cost to the railroad in carrying out this order. On Monday morning Borough President Connolly informed the Executive Officer over the telephone that all efforts at an agreement had failed and the conference was therefore held as arranged.

In this conference Mr. Blake represented the City, Mr. Morgan and his engineer, Mr. Cram, represented the railroad, Mr. Selmer and Mr. Latey represented the Commission, and I presided.

It became clear that the difficulty lay in the fact that in the previous hearings there had been no agreed basis on which the estimates of cost were made. Each engineer had figured them on his own basis, no two alike. We therefore agreed that the first necessity was to arrive at a uniform understanding of what this basis should be, and in the end unanimously agreed that the only fair basis on which we could figure would be to assume that the railroad would literally obey an order to take up its existing tracks and put them down again in the new site.

In reality, the railroad contemplates building an entirely new improved track with heavier rails in the new site, and it was this fact and an effort to analyze costs of relocation in connection with the installation of entirely new track that had caused the different bases of estimates and the widely different results.

Having accepted the above hypothetical basis for an estimate, the engineers in conference went over in detail the items of cost involved in this hypothetical relocation and in the end agreed that a total of \$24,000 was a very fair estimate of this cost.

The hearing was reconvened at 10:30 Wednesday morning in order that the results of this engineering conference could be embodied in the record and form a basis for the action of the Commission under the law requiring it to apportion the costs between the City and the railroad.

Considering the additional testimony given at the final hearing, I am of the opinion that the amount of \$24,000 represents as accurately as it is possible to arrive at any definite figure, the cost to the

railroad of carrying out the order of the Commission to relocate its tracks in the centre of the new improved road.

As to the matter of allocation of this cost between the City and the road, this special Act of the Legislature imposes upon the Commission the duty of allocating this cost. It appears to me in this case quite impossible to determine beyond dispute an exact measure of benefits accruing to the railroad and to the City. In the case of grade crossing eliminations on steam railroads the Legislature evidently realized that it would be impossible to measure financially the relative benefits to the road and to the community, and therefore provided by law that these costs should be borne equally by the road and by the community. In this case the railroad and the community are partners in the use of the same highway, and the proposed improvement is going to benefit both. The City is going to a great expense in grading, draining and paving this highway, and the railroad will be expending perhaps eighty or ninety thousand dollars in building in this improved highway a modern high-grade track. These improvements are mutually of benefit to the community and to the railroad. I therefore believe that without prejudice to the method of allocating these costs in any other specific case, that in this case the fairest allocation that can be made will be to divide the cost equally between the road and the City. I therefore, in view of the uncontroverted evidence at the rehearing showing benefits to the railroad, do now

Recommend that the Commission rescind its former order in this case and issue a new order based on a cost of \$24,000 to the railroad company to make the required relocation, and a determination that this cost shall be borne equally by the railroad and by the City, that the City shall pay to the railroad \$12,000, and that when such payment is made the railroad shall proceed with all expedition to carry out the order.

In the Matter of the Application of INTERBOROUGH RAPID TRANSIT COMPANY for authority to issue \$16,436,000 face amount of 5% bonds under and secured by its First and Refunding Mortgage dated March 20, 1913.

CASE No. 2182

In the Matter of the Application of INTERBOROUGH RAPID TRANSIT COMPANY for authority to issue \$25,483,772 face amount of 5% bonds under and secured by its First and Refunding Mortgage dated March 20, 1913.

CASE No. 2218

In the Matter of the Application of INTERBOROUGH RAPID TRANSIT COMPANY for authority to issue and dispose of \$39,416,000 face amount of three year 7% notes.

CASE No. 2306

In the Matter of the Application of INTERBOROUGH RAPID TRANSIT COMPANY for authority to issue and dispose of \$10,500,000 face amount of Ten Year Unsecured 6% Gold Notes.

CASE No. 2662

Bond and Note Issues—Interborough Rapid Transit Company—Applications Consist of Modifications of Orders in Outstanding Proceedings and Approval of Issuance of New 6% Notes—Commission has not Limited Itself to Proceedings Technically Before It but has Considered Entire Reorganization Plan of Company.—Although technically the matters that are before the Commission in the above entitled proceedings consist of applications for the modification of orders in these outstanding proceedings and for the approval of the issuance of \$10,500,000 new six per cent. notes, the Commission, in pursuance of the policy announced to representatives of the security holders when the Interborough reorganization plan was first broached, has not limited itself to the proceedings technically before it, but has considered the entire plan, believing that a matter of this importance should be disposed of through a broad, comprehensive study of the entire situation and not be limited to certain elements in the plan that, under the statute, require Commission approval.

Bond and Note Issues—Interborough Rapid Transit Company—Fundamental Conditions that Commission required to be Met in Reorganization Plan—No Increase in Fare—Funds for New Cars, Power Service and Other Equipment—Interborough-Consolidated Company to be Done Away With—Eliminate 7% Return on Manhattan Stock—Future Dividend of Interborough Company Limited to 7%—No Dividends During Next Five Years—Public Representation on New Board of Directors—Plan Should Be Considered Preliminary Step in Carrying Out Commission's Broader Plan for Municipal Ownership and Unification of Transit Properties in City.—In preliminary informal discussions that the Transit Commissioners had last spring with Judge Mayer and the representatives of the various security groups the Commissioners, without committing themselves in the matter of final judgment, laid down certain fundamental conditions that they would in any event require to be met. These were: (1) That the plan did not contemplate any increase in fare beyond five cents; or any reduction of service for the five-cent fare now given on the Interborough and Manhattan lines; (2) that it should provide funds for new cars, to develop power service and other equipment to meet the present and future service orders of the Commission; (3) that it should do away wholly with the Interborough-Consolidated Company and its \$114,000,000 of securities; (4) that it should eliminate the fixed 7% return on Manhattan stock paid by the Interborough Company by way of rental for the elevated properties, amounting to \$4,200,000 a year, and that the rental paid to the Manhattan Company be reduced

to a reasonable rate, payable only in years in which it was earned; (5) that it should limit the possible future dividends of the Interborough Company to 7% to be payable only if earned; (6) that no dividends whatever should be paid upon Interborough stock during the next five years; the revenue, within the proposed limitation, to be devoted exclusively to service; (7) that it should provide for public representation in the new board of directors; and, finally, (8) that it should be considered as a preliminary step in the carrying out of the Commission's broader plan for municipal ownership and unification of all the useful transit properties in the City.

Bond and Note Issues—Interborough Rapid Transit Company—What Plan Provides For—Elimination of Fixed Manhattan Dividend Rental—Foreclosure of Mortgage Securing Interborough-Metropolitan Bonds—Divorce of Interborough Company from Interborough-Consolidated Corporation—Extension of Notes—Postponement of Sinking Fund Payment—Authorization of New Issue of 10 Year 6% Notes—Board of Directors of Interborough Company to be Elected by Various Groups—Dividend Rate on Interborough Stock Restricted.—In general terms the plan provides for (1) the elimination of the fixed 7% Manhattan dividend rental and the substitution of a return, *if earned*. This return, if earned, is fixed at: For the fiscal year ending July 1, 1923, 3%; for the fiscal year ending July 1, 1924, 4%; for the fiscal year ending July 1, 1925, 5%; for each subsequent year thereafter 5%; (2) the foreclosure of the mortgage securing the \$70,000,000 4½% Interborough-Metropolitan bonds and the complete divorce of the Interborough Company from Interborough-Consolidated Corporation; (3) extension of the outstanding matured 7% notes for ten years from September 1, 1922; (4) postponement of sinking fund payments under the mortgage securing the Interborough 5% bonds for a period of five years beginning January 1, 1921; (5) the authorization of a new issue of \$15,000,000 of 10-year 6% notes of which \$10,500,000 is presently to be issued. Such new present issue to be absorbed by holders of the Interborough-Metropolitan 4½% bonds; (6) the members of the board of directors of the Interborough Company to be elected by various group interests as follows: 9 by the Interborough stockholders, 3 by Interborough bondholders, 3 by Manhattan stockholders and 3 by public authority; (7) the dividend rate on Interborough stock is restricted to a maximum of 7% and no dividends to be declared for the next five years.

Bond and Note Issues—Interborough Rapid Transit Company—Beneficial Results of Plan Apparent by Comparison of Results with Existing Conditions of Company—Alternative of Plan a Receivership—Those Responsible for Plan Have Performed a Public Service—Changes Show Substantial Progress Toward Reorganization Contemplated in Commission's Comprehensive Plan.—It is by a comparison of these results with the existing conditions of the Interborough Company that the beneficial results of the plan are apparent. Furthermore, the only alternative of the plan would seem to be a receivership which would be the source of incalculable damage to security holders and the public as well. In the formulation of the plan and the remarkable success in securing the assent of thousands of widely scattered security holders, and thus avoiding receiverships and probable disintegration, Judge Mayer and those associated with him have performed a service not only to the security holders but to the public as well. Furthermore, all these changes show substantial progress toward the reorganization contemplated in the commission's comprehensive plan and those changes, together with the ability now to deal with a compact, responsible representation of the several group interests, will greatly facilitate putting the larger plan into effect.

Bond and Note Issues—Interborough Rapid Transit Company—Recommendation.—The technical applications before the Commission cover the modification of existing orders of the Commission in three old proceedings and the approval of the new 6% note issue in a new proceeding. Recommended all the applications be granted.

Bond and Note Issues—Interborough Rapid Transit Company—Suggestions of Corporation Counsel.—The Corporation Counsel made numerous suggestions in the matter of adoption of orders in the above proceedings. The suggestion with respect to the five cent fare was dismissed as the Commission held that an increase thereof had no practical importance except to politicians who strive to use it for political effect. As for his other suggestions, the Commission held that the orders provided for them.

Hearing closed October 17, 1922. Orders adopted and opinion approved October 27, 1922.

These proceedings came on before the Commission upon receipt of the following petitions of the Interborough Rapid Transit Company by Frank Hedley, President and General Manager, all dated and verified October 4, 1922.

PETITION FOR REHEARING CASE No. 2182

The petition of Interborough Rapid Transit Company respectively shows:

FIRST: That by final order made herein by the Public Service Commission for the First District on September 5, 1918, petitioner was authorized to issue Twenty-eight million, four hundred eighty-nine thousand (\$28,489,000) Dollars face value of principal of its First and Refunding Mortgage 5% Gold Bonds, dated as of January 1, 1913, maturing January 1, 1966, and to dispose of the same by pledge, at not less than sixty-four per centum (64%) of the face value thereof, as collateral security for the Three Year Secured Convertible 7% Gold Notes of petitioner, dated as of September 1, 1918, the issuance of which notes was approved by the Public Service Commission for the First District by Order in Case No. 2306, also entered on September 5, 1918; that the approval of the issuance and pledge of petitioner's bonds was subject to the terms and conditions set forth in said order, which was duly accepted by petitioner.

SECOND: That pursuant to the terms of the Commission's Order in Case 2306, petitioner duly created and disposed of, upon the terms specified, its Three Year Secured Convertible 7% Gold Notes, dated as of September 1, 1918, to the aggregate principal amount of Thirty-nine million, four hundred sixteen thousand (\$39,416,000) Dollars, and duly pledged, as collateral therefor, with the Trustee named in the indentures securing said notes, \$28,489,000 principal amount of said First and Refunding Mortgage Bonds authorized as hereinbefore set forth, together with \$33,098,000 principal amount of said Bonds, the issue and pledge of which for the same purpose was authorized by Order of the Public Service Commission for the First District in Case 2218, also entered on September 5, 1918.

THIRD: That by further Order made in Case 2306 by the Transit Commission, the Commission consented to and approved the extension of the date of the maturity of petitioner's Three Year Secured Convertible 7% Gold Notes from September 1, 1921, to September 1, 1922, and to the increase in the rate of interest payable thereon from 7% per annum to

8% per annum during the period of the extension therein provided for, upon certain conditions set forth in said order; that said order and the conditions thereof, were duly accepted by petitioner.

FOURTH: That prior to September 1, 1922, One million, two hundred seventy-one thousand six hundred (\$1,271,600) Dollars principal amount of petitioner's Three Year Secured Convertible 7% Gold Notes had been retired and paid off; that as the result of the retirement of said notes and under the terms of the indentures securing the same, One million, nine hundred eighty-five thousand (\$1,985,000) Dollars principal amount of petitioner's First and Refunding Mortgage 5% Gold Bonds (being part of the \$61,587,000 principal amount of said bonds authorized to be issued by the Public Service Commission in Cases 2182 and 2218, as above set forth for the purposes of collateral, and actually pledged with the Trustee under the indentures securing the notes) had been released by the Trustee and withdrawn by petitioner.

That of the \$1,985,000 principal amount of said bonds so released and withdrawn, \$919,000 principal amount were part of the bonds authorized to be issued and pledged under the terms of the Commission's Order in Case 2182, and the balance, \$1,066,000 principal amount, were part of the bonds authorized to be issued and pledged under the terms of the Commission's Order in Case 2218.

That as the result of such release and withdrawal, Fifty-nine million, six hundred and two thousand (\$59,602,000) Dollars principal amount, out of the aggregate of Sixty-one million, five hundred eighty-seven thousand, five hundred (\$61,587,500) Dollars principal amount authorized by the Commission in Cases 2182 and 2218, now remain as such collateral in possession of the Trustee under the indentures securing the Three Year Secured Convertible 7% Gold Notes; that of the bonds so remaining as collateral, Twenty-seven million, five hundred seventy thousand (\$27,570,000) Dollars principal amount are part of the bonds authorized in Case 2182, and Thirty-two million, thirty-two thousand (\$32,032,000) Dollars principal amount are part of the bonds authorized in Case 2218.

FIFTH: That of the \$1,985,000 principal amount of bonds so released and withdrawn, as above set forth, \$1,521,000 principal amount have been utilized by petitioner for payments into the sinking fund provided for in its First and Refunding Mortgage; that of the bonds so utilized, \$703,537 principal amount are part of the bonds authorized in Case 2182, and \$817,463 principal amount are part of the bonds authorized in Case 2218.

SIXTH: That of the \$1,985,000 principal amount of bonds so released and withdrawn, \$464,000 principal amount have been retained and are now held by petitioner in its treasury to be utilized in the future only with the approval of the Commission; that of the bonds so retained, \$215,463 principal amount are part of the bonds authorized in Case 2182, and \$248,537 principal amount are part of the bonds authorized in case 2218.

SEVENTH: That the financial condition of petitioner was such that it was impossible for it to refund the \$38,144,400 principal amount of its Three Year Secured Convertible 7% Gold Notes outstanding at the extended maturity date on September 1, 1922, through the issuance and sale of its First and Refunding Mortgage 5% Bonds, or otherwise.

EIGHTH: That none of the holders of petitioner's Three Year Secured Convertible 7% Gold Notes have exercised the option to convert said notes into the pledged bonds at the rate or price of eighty-seven and one-half (87½) prescribed in the indentures securing the said notes.

NINTH: That for more than three years last past the rapid transit railroad operations of petitioner have been conducted at a substantial loss,

that is, that its revenues have been insufficient to pay, in full, the operating expenses, taxes, rentals due to the City of New York under subway contracts Nos. 1 and 2, the rental payable for the elevated lines of the Manhattan Railway Company and the fixed charges upon the First Mortgage Bonds and Three Year Notes of petitioner, the proceeds of which have been utilized in carrying out its obligations under the subway contracts and the elevated certificates.

TENTH: That the financial difficulties which have confronted, and continue to confront petitioner, have had the effect of impairing its credit to such an extent that under existing conditions a receivership could not long be averted nor could the additional funds required for needed improvements be obtained; that because of this situation, and in order to obviate the inevitable expense and loss to security holders which would result from a receivership, committees of the holders of securities of petitioner and of the Manhattan Railway Company, after lengthy deliberations, formulated and adopted a Plan of Readjustment, dated May 1, 1922; that certain "Modifications" to said Plan were subsequently agreed upon; that copies of said Plan and Modifications are before the Commission as exhibits to another petition filed contemporaneously herewith; that said Plan and Modifications have also been formally adopted and approved by petitioner.

ELEVENTH: That pursuant to said Plan, and deposit agreements made as a result thereof between security holders and committees representing (1) petitioner's First and Refunding Mortgage 5% Gold Bonds and its Three Year Secured Convertible 7% Gold Notes, (2) the Interborough-Metropolitan 4½% Collateral Trust Bonds, and (3) the Manhattan Railway Company capital stock, the owners of each of said class of securities have deposited their holdings in such substantial amounts with the depositaries named in the separate deposit agreements, as evidence of their participation in and approval of the Plan of Readjustment, that petitioner believes that, within a reasonably short period, said committee will unite in declaring the Plan of Readjustment operative and in effect.

TWELFTH: That the pertinent provisions of the said Plan of Readjustment, dated May 1, 1922, which affect petitioner's Three Year Secured Convertible 7% Gold Notes and upon which the holders of said notes have relied and acted in depositing the same as evidence of their participation in the Plan, are the following:

(a) That 10% of the principal amount of said notes outstanding will be paid by petitioner in cash within sixty (60) days after the date that the Plan is declared operative.

(b) That the remaining 90% of said outstanding notes will be extended or refunded, by the issuance by petitioner and the acceptance by depositors of a new issue of petitioner's Ten Year Secured Convertible 7% Gold Notes in a principal amount substantially equivalent to 90% of petitioner's outstanding Three Year Notes, to be dated September 1, 1922, and to become due and payable September 1, 1932.

(c) That the new notes will be secured by all the existing collateral to petitioner's outstanding Three Year Notes.

(d) That the new notes will be redeemable in whole or in part upon notice (those in part to be chosen by lot) on any semi-annual interest date prior to maturity at a redemption price to be determined by adding to the principal amount of the notes to be redeemed a premium equal to one-quarter of one per centum of said principal amount for each unexpired semi-annual interest period of the ten year term.

(e) With the approval of the Commission, that the conversion

price at which the new notes may be surrendered and exchanged for pledged bonds will be at the following rates: 80% if conversion is made prior to September 1, 1925; 85% if made after September 1, 1925, and prior to September 1, 1928; 90% if made after September 1, 1928, and prior to September 1, 1932.

THIRTEENTH: That in order to consummate said Plan of Readjustment, petitioner proposes (as is more fully set forth in the petition for rehearing in Case 2306, filed contemporaneously herewith) to create an issue of Thirty-four million, three hundred thirty thousand (\$34,330,000) Dollars principal amount of its Ten Year Secured Convertible 7% Gold Notes, which are to be dated as of September 1, 1922, and which are to be secured by the pledge of the Fifty-nine million, six hundred and two thousand (\$59,602,000) Dollars principal amount of petitioner's First and Refunding Mortgage 5% Gold Bonds now remaining as collateral for the outstanding Thirty-eight million, one hundred forty-four thousand, four hundred (\$38,144,400) Dollars principal amount of Three Year Secured Convertible 7% Gold Notes, and which are to carry the right of conversion into the pledged bonds, at the option of the holder, at any time prior to maturity, as follows:

In the case of notes surrendered for conversion at any time prior to September 1, 1925, pledged bonds are to be delivered in exchange in an aggregate principal amount, which when computed at 80% thereof will equal the the aggregate principal amount of the notes so surrendered.

If such surrender be made at any time after September 1, 1925, and prior to September 1, 1928, the pledged bonds are to be delivered in exchange in an aggregate principal amount, which when computed at 85% thereof will equal the aggregate principal amount of the notes so surrendered.

If such surrender be made at any time after September 1, 1928, and prior to September 1, 1932, the pledged bonds are to be delivered in exchange for an aggregate principal amount, which when computed at 90% thereof will equal the aggregate principal amount of the notes so surrendered.

That the effect of retaining or re-pledging the \$59,602,000 principal amount of petitioner's First and Refunding Mortgage 5% Gold Bonds as collateral security for the proposed issue of \$34,330,000 principal amount of its Ten Year Secured Convertible 7% Gold Notes is equivalent to a pledge of said bonds at the rate of 57½%.

WHEREFORE, petitioner prays for a rehearing herein, and for an order of the Commission approving the disposal of Twenty-seven million, five hundred seventy thousand (\$27,570,000) Dollars principal amount of the bonds heretofore authorized herein, by pledging the same at not less than fifty-seven and one-half per centum (57½%) of the face value thereof as collateral security for Ten Year Secured Convertible 7% Gold Notes of petitioner, dated as of September 1, 1922, the said notes being convertible at any time prior to maturity into said bonds, at the following rates:

At 80% of the par or face value of said bonds if such conversion be made at any time prior to September 1, 1925.

At 85% of the par or face value of said bonds if such conversion be made at any time after September 1, 1925, and prior to September 1, 1928.

At 90% of the par or face value of said bonds if such conversion be made at any time after September 1, 1928, and prior to September 1, 1932.

PETITION FOR REHEARING
CASE No. 2218

The petition of Interborough Rapid Transit Company respectfully shows:

FIRST: That by final order made herein by the Public Service Commission for the First District on September 5, 1918, petitioner was authorized to issue Thirty-three million ninety-eight thousand five hundred (\$38,098,500) Dollars face value of principal of its First and Refunding Mortgage 5% Gold Bonds, dated as of January 1, 1913, maturing January 1, 1966, and to dispose of the same by pledge, at not less than sixty-four per centum (64%) of the face value thereof, as collateral security for the Three Year Secured Convertible 7% Gold Notes of petitioner, dated as of September 1, 1918, the issuance of which notes was approved by the Public Service Commission for the First District by order in Case No. 2306, also entered on September 5, 1918; that the approval of the issuance and pledge of petitioner's bonds was subject to the terms and conditions set forth in said order, which was duly accepted by petitioner.

SECOND: That pursuant to the terms of the Commission's order in Case 2306 petitioner duly created and disposed of, upon the terms specified, its Three Year Secured Convertible 7% Gold Notes to the aggregate principal amount of Thirty-nine million four hundred sixteen thousand (\$39,416,000) Dollars, and duly pledged, as collateral therefor, with the Trustee named in the indentures securing said notes, Thirty-three million ninety-eight thousand (\$33,098,000) Dollars, principal amount of said Thirty-three million ninety-eight thousand five hundred (\$33,098,500) Dollars First and Refunding Mortgage Bonds, authorized as hereinbefore set forth, together with Twenty-eight million four hundred and eighty-nine thousand (\$28,489,000) Dollars principal amount of said bonds, the issue and pledge of which for the same purpose was authorized by order of the Public Service Commission for the First District, in Case 2182, also entered on September 5, 1918.

THIRD: That by further order made in Case 2306 by the Transit Commission, the Commission consented to and approved the extension of the date of the maturity of petitioner's Three Year Secured Convertible 7% Gold Notes from September 1, 1921, to September 1, 1922, and to the increase in the rate of interest payable thereon from 7% per annum to 8% per annum during the period of the extension therein provided for, upon certain conditions set forth in said order; that said order and the conditions thereof were duly accepted by petitioner.

FOURTH: That prior to September 1, 1922, One million two hundred seventy-one thousand six hundred (\$1,271,600) Dollars principal amount of petitioner's Three Year Secured Convertible 7% Gold Notes had been retired and paid off; that as the result of the retirement of said notes, and under the terms of the indentures securing the same, One million nine hundred eighty-five thousand (\$1,985,000) Dollars principal amount of petitioner's First and Refunding Mortgage 5% Gold Bonds (being part of the Sixty-one million five hundred and eighty-seven thousand (\$61,587,000) Dollars principal amount of said bonds authorized to be issued by the Public Service Commission in Cases 2218 and 2182, as above set forth, for purposes of collateral and actually pledged with the Trustee under the indentures securing the notes) had been released by the Trustee and withdrawn by petitioner.

That of the One million nine hundred and eighty-five thousand (\$1,985,000) Dollars principal amount of said bonds so released and withdrawn

One million sixty-six thousand (\$1,066,000) Dollars principal amount were bonds authorized to be issued and pledged under the terms of the Commission's order in Case 2218, and the balance, Nine hundred and nineteen thousand (\$919,000) Dollars principal amount, were part of the bonds authorized to be issued and pledged under the terms of the Commission's order in Case 2182.

That as the result of such release and withdrawal Fifty-nine million six hundred and two thousand (\$59,602,000) Dollars principal amount, out of the aggregate of Sixty-one million five hundred eighty-seven thousand five hundred (\$61,587,500) Dollars principal amount authorized by the Commission in Cases 2218 and 2182, now remain as such collateral in possession of the Trustee under the indentures securing the Three Year Secured Convertible 7% Gold Notes; that of the bonds so remaining as collateral Thirty-two million thirty-two thousand (\$32,032,000) Dollars principal amount are part of the bonds authorized in Case 2218, and Twenty-seven million five hundred seventy thousand (\$27,570,000) Dollars principal amount are part of the bonds authorized in Case 2182.

FIFTH: That of the One million nine hundred eighty-five thousand (\$1,985,000) Dollars principal amount of bonds so released and withdrawn, as above set forth, One million five hundred twenty-one thousand (\$1,521,000) Dollars principal amount have been utilized by petitioner for payments into the sinking fund provided for in its First and Refunding Mortgage; that of the bonds so utilized Eight hundred seventeen thousand four hundred sixty-three (\$817,463) Dollars principal amount are part of the bonds authorized in Case 2218, and Seven hundred and three thousand five hundred and thirty-seven (\$703,537) Dollars principal amount are part of the bonds authorized in Case 2182.

SIXTH: That of the One million nine hundred eighty-five thousand (\$1,985,000) Dollars principal amount of bonds so released and withdrawn Four hundred sixty-four thousand (\$464,000) Dollars principal amount have been retained and are now held by petitioner in its treasury to be utilized in the future only with the approval of the Commission; that of the bonds so retained Two hundred forty-eight thousand five hundred thirty-seven (\$248,537) Dollars principal amount are part of the bonds authorized in Case 2218, and Two hundred fifteen thousand four hundred sixty-three (\$215,463) Dollars principal amount are part of the bonds authorized in Case 2182.

SEVENTH: That the financial condition of petitioner was such that it was impossible for it to refund the Thirty-eight million one hundred forty-four thousand four hundred (\$38,144,400) Dollars principal amount of its Three Year Secured Convertible 7% Gold Notes outstanding at the extended maturity date on September 1, 1922, through the issuance and sale of its First and Refunding Mortgage 5% Bonds, or otherwise.

EIGHTH: That none of the holders of petitioner's Three Year Secured Convertible 7% Gold Notes have exercised the option to convert said notes into the pledged bonds at the rate or price of eighty-seven and one-half (87½) prescribed in the indentures securing the said notes.

NINTH: That for more than three years last past the rapid transit railroad operations of petitioner have been conducted at a substantial loss, that is, that its revenues have been insufficient to pay, in full, the operating expenses, taxes, rentals due to the City of New York under subway contracts Nos. 1 and 2, the rental payable for the elevated lines of the Manhattan Railway Company and the fixed charges upon the First Mortgage Bonds and Three Year Notes of petitioner, the proceeds

of which have been utilized in carrying out its obligations under the subway contracts and the elevated certificates.

TENTH: That the financial difficulties which have confronted, and continue to confront, petitioner have had the effect of impairing its credit to such an extent that under existing conditions a receivership could not long be averted nor could the additional funds required for needed improvements be obtained; that because of this situation, and in order to obviate the inevitable expense and loss to security holders which would result from a receivership, committees of the holders of securities of petitioner and of the Manhattan Railway Company, after lengthy deliberations, formulated and adopted a Plan of Readjustment, dated May 1, 1922; that certain "Modifications" to said Plan were subsequently agreed upon; that copies of said Plan and Modifications are before the Commission as exhibits to another petition filed contemporaneously herewith; that said Plan and Modifications have also been formally adopted and approved by petitioner.

ELEVENTH: That pursuant to said Plan and deposit agreements made as a result thereof between security holders and committees representing (1) petitioner's First and Refunding Mortgage 5% Gold Bonds and its Three Year Secured Convertible 7% Gold Notes, (2) the Interborough-Metropolitan 4½% Collateral Trust Bonds, and (3) the Manhattan Railway Company capital stock, the owners of each of said class of securities have deposited their holdings in such substantial amounts with the depositaries named in the separate deposit agreements, as evidence of their participation in and approval of the Plan of Readjustment, that petitioner believes that, within a reasonably short period, said committees will unite in declaring the Plan of Readjustment operative and in effect.

TWELFTH: That the pertinent provisions of the said Plan of Readjustment, dated May 1, 1922, which effect petitioner's Three Year Secured Convertible 7% Gold Notes and upon which the holders of said notes have relied and acted in depositing the same as evidence of their participation in the Plan are the following:

(a) That 10% of the principal amount of said notes outstanding will be paid by petitioner in cash within sixty (60) days after the date that the Plan is declared operative.

(b) That the remaining 90% of said outstanding notes will be extended or refunded by the issuance by petitioner and the acceptance by depositors of a new issue of petitioner's Ten Year Secured Convertible 7% Gold Notes in a principal amount substantially equivalent to 90% of petitioner's outstanding Three Year Notes, to be dated September 1, 1922, and to become due and payable September 1, 1932.

(c) That the new notes will be secured by all the existing collateral to petitioner's outstanding Three Year Notes.

(d) That the new notes will be redeemable in whole or in part upon notice (those in part to be chosen by lot) on any semi-annual interest date prior to maturity at a redemption price to be determined by adding to the principal amount of the notes to be redeemed a premium equal to one-quarter of one per centum of said principal amount for each unexpired semi-annual interest period of the ten year term.

(e) With the approval of the Commission, that the conversion price at which the new notes may be surrendered and exchanged for pledged bonds will be at the following rates: 80% if conversion is made prior to September 1, 1925; 85% if made after September 1, 1925, and prior to September 1, 1928; 90% if made after September 1, 1928, and prior to September 1, 1932.

THIRTEENTH: That in order to consummate said Plan of Readjustment petitioner proposes (as is more fully set forth in the petition for rehearing in Case No. 2306, filed contemporaneously herewith) to create an issue of Thirty-four million three hundred thirty thousand (\$34,330,000) Dollars principal amount of its Ten Year Secured Convertible 7% Gold Notes, which are to be dated as of September 1, 1922, and which are to be secured by the pledge of the Fifty-nine million six hundred and two thousand (\$59,602,000) Dollars principal amount of petitioner's First and Refunding Mortgage 5% Gold Bonds now remaining as collateral for the outstanding Thirty-eight million one hundred forty-four thousand four hundred (\$38,144,400) Dollars principal amount of Three Year Secured Convertible 7% Gold Notes, and which are to carry the right of conversion into the pledged bonds, at the option of the holder at any time prior to maturity, as follows:

In the case of notes surrendered for conversion at any time prior to September 1, 1925, pledged bonds are to be delivered in exchange in an aggregate principal amount which when computed at 80% thereof will equal the aggregate principal amount of the notes so surrendered.

If such surrender be made at any time after September 1, 1925, and prior to September 1, 1928, the pledged bonds are to be delivered in exchange in an aggregate principal amount which when computed at 85% thereof will equal the aggregate principal amount of the notes so surrendered.

If such surrender be made at any time after September 1, 1928, and prior to September 1, 1932, the pledged bonds are to be delivered in exchange for an aggregate principal amount which when computed at 90% thereof will equal the aggregate principal amount of the notes so surrendered.

That the effect of retainnig or re-pledging the Fifty-nine million six hundred and two thousand (\$59,602,000) Dollars principal amount of petitioner's First and Refunding Mortgage 5% Gold Bonds as collateral security for the proposed issue of Thirty-four million three hundred thirty thousand (\$34,330,000) Dollars principal amount of its Ten Year Secured Convertible 7% Gold Notes is equivalent to a pledge of said bonds at the rate of 57½%.

WHEREFORE, petitioner prays for a rehearing herein, and for an order of the Commission approving the disposal of Thirty-two million thirty-two thousand (\$32,032,000) Dollars principal amount of the bonds heretofore authorized herein by pledging the same at not less than fifty-seven and one-half per centum (57½%) of the face value thereof as collateral security for Ten Year Secured Convertible 7% Gold Notes of petitioner, dated as of September 1, 1922, the said notes being convertible at any time prior to maturity into said bonds at the following rates:

At 80% of the par or face value of said bonds if such conversion be made at any time prior to September 1, 1925.

At 85% of the par or face value of said bonds if such conversion be made at any time after September 1, 1925, and prior to September 1, 1928.

At 90% of the par or face value of said bonds if such conversion be made at any time after September 1, 1928, and prior to September 1, 1932.

PETITION FOR REHEARING

CASE No. 2306

The petition of Interborough Rapid Transit Company respectfully shows:

FIRST: That by final order made herein by the Public Service Commission for the First District on September 5, 1918, petitioner was authorized to issue and dispose of \$39,416,000 principal amount of its Three Year Secured 7% Gold Notes which were dated as of September 1, 1918, and which became due and payable September 1, 1921; that by final orders in Cases 2182 and 2218, also made by the Public Service Commission for the First District on September 5, 1918, petitioner was authorized to issue its First and Refunding Mortgage 5% Gold Bonds to the principal amount of \$61,587,500, and to pledge the same as collateral security for said notes authorized by the order in Case 2306 at not less than sixty-four per cent (64%) of the face value of said bonds; that in accordance with the terms of said order in Case No. 2306 petitioner issued and sold the full amount of the notes so authorized and has applied the proceeds thereof in accordance with the terms of said order, except for an unexpended balance of \$4,342,308.05, which is still available.

SECOND: That by further order made herein by the Transit Commission on August 5, 1921, the Commission consented to and approved the extension of the date of maturity of the said notes from September 1, 1921, to September 1, 1922, and to the increase in the rate of interest payable on said notes from 7% per annum to 8% per annum during the period of the extension therein provided for, upon certain conditions set forth in said order; that said order and the conditions thereof were duly accepted by petitioner.

THIRD: That prior to September 1, 1922, \$1,271,600 principal amount of said notes had been retired and paid off in the manner provided in the collateral indentures securing said notes; that, as the result of the retirement of said notes and under the terms of the indentures securing the same, \$1,985,000 principal amount of bonds collateral to said notes have been released by the Trustee and withdrawn by petitioner; that, of the \$1,985,000 principal amount of bonds so released and withdrawn, \$1,521,000 principal amount have been utilized by petitioner for payments into the sinking fund provided for in its First and Refunding Mortgage, and \$464,000 principal amount of said bonds have been retained and are now held by petitioner in its treasury.

FOURTH: That prior to the 1st day of September, 1922, the holders of \$37,646,400 principal amount of the outstanding \$38,144,400 principal amount of petitioner's Three Year Secured Convertible 7% Gold Notes had agreed to the extension of the maturity date as authorized by the Commission to September 1, 1922, and had indicated their consent to that extension by accepting extension agreements attached to their original notes; that of the entire outstanding issue to holders of only \$498,000 principal amount of said notes had either refused or neglected to avail themselves of the extension of the maturity date and the increased interest rate.

FIFTH: That the financial condition of petitioner was such that it was impossible for it to refund the principal amount of said notes now outstanding at their extended maturity date on September 1, 1922, through the issuance and sale of its First and Refunding Mortgage 5% Bonds, or otherwise.

SIXTH: That for more than three years last past the rapid transit railroad operations of petitioner have been conducted at a substantial loss, that is, that its revenues have been insufficient to pay, in full, the operating expenses, taxes, rentals due to the City of New York under subway contracts Nos. 1 and 2, the rental payable for the elevated lines of the Manhattan Railway Company and the fixed charges upon the First Mortgage Bonds and Three Year Notes of petitioner, the proceeds of which have been utilized in carrying out its obligations under the subway contracts and the elevated certificates.

SEVENTH: That the financial difficulties which have confronted, and continue to confront, petitioner have had the effect of impairing its credit to such an extent that under existing conditions a receivership could not long be averted nor could the additional funds required for needed improvements be obtained; that because of this situation, and in order to obviate the inevitable expense and loss to security holders which would result from a receivership, committees of the holders of securities of petitioner and of the Manhattan Railway Company, after lengthy deliberations, formulated and adopted a Plan of Readjustment, dated May 1, 1922; that certain "Modifications" to said Plan were subsequently agreed upon; that copies of said Plan and Modifications are hereto annexed and are hereby made a part of this petition; that said Plan and Modifications have also been formally adopted and approved by petitioner.

EIGHTH: That pursuant to said Plan, and deposit agreements made as a result thereof between security holders and committees representing (1) petitioner's First and Refunding Mortgage 5% Gold Bonds and its Three Year Secured Convertible 7% Gold Notes, (2) the Interborough-Metropolitan 4½% Collateral Trust Bonds, and (3) the Manhattan Railway Company capital stock, the owners of each of said class of securities have deposited their holdings in such substantial amounts with the depositaries named in the separate deposit agreements, as evidence of their participation in and approval of the Plan of Readjustment, that petitioner believes that within a reasonably short period said committees will unite in declaring the Plan of Readjustment operative and in effect.

NINTH: That the pertinent provisions of the said Plan of Readjustment, dated May 1, 1922, which affect petitioner's Three Year Secured Convertible 7% Gold Notes, and upon which the holders of said notes have relied and acted in depositing the same as evidence of their participation in the Plan, are the following:

(a) That 10% of the principal amount of said notes outstanding will be paid by petitioner in cash within sixty (60) days after the date that the Plan is declared operative. Petitioner shows that it will obtain the cash for this purpose from the proceeds of its unsecured Ten Year 6% Gold Notes, \$10,500,000 principal amount of which are to be disposed of in accordance with said Plan, a petition for the approval of which is filed contemporaneously herewith.

(b) That the remaining 90% of said outstanding notes will be extended or refunded, by the issuance by petitioner and the acceptance by depositors of a new issue of petitioner's Ten Year Secured Convertible 7% Gold Notes in a principal amount substantially equivalent to 90% of petitioner's outstanding Three Year Notes, to be dated September 1, 1922, and to become due and payable September 1, 1932.

(c) That the new notes will bear interest at the rate of 7% per annum, payable semi-annually on March 1st and September 1st of each year.

(d) That the new notes will be secured by all the existing collateral to petitioner's outstanding Three Year Notes.

(e) That the new notes will be redeemable in whole or in part upon notice (those in part to be chosen by lot) on any semi-annual interest date prior to maturity at a redemption price to be determined by adding to the principal amount of the notes to be redeemed a premium equal to one-quarter of one per centum of said principal amount for each unexpired semi-annual interest period of the ten year term.

(f) With the approval of the Commission, that the conversion price at which the new notes may be surrendered and exchanged for pledged bonds will be at the following rates:

At 80% of the par or face value of said bonds if such conversion be made at any time prior to September 1, 1925.

At 85% of the par or face value of said bonds if such conversion be made at any time after September 1, 1925, and prior to September 1, 1928.

At 90% of the par or face value of such bonds if such conversion be made at any time after September 1, 1928, and prior to September 1, 1932.

TENTH: That it is proposed, with the approval of the Commission, to issue said notes under and pursuant to an indenture between petitioner and the Bankers Trust Company, as Trustee, substantially in the form hereto annexed.

WHEREFORE, petitioner prays for a rehearing herein, and for the consent of the Commission to the issuance of Thirty-four million three hundred and thirty thousand (\$34,330,000) Dollars principal amount of 7% notes dated as of September 1, 1922, maturing September 1, 1932; secured by Fifty-nine million six hundred and two thousand (\$59,602,000) Dollars principal amount of petitioner's First and Refunding Mortgage 5% Gold Bonds; convertible at any time up to within thirty (30) days of maturity, and thereafter until maturity, provided notice of election to convert and the date thereof be made at least thirty (30) days prior to maturity, into the pledged bonds, at the rates and during the periods set forth in paragraph Ninth hereof; and redeemable on any semi-annual interest date, in whole or in part, at par, and a premium of one-quarter of one per centum for each unexpired semi-annual interest period of the ten year term.

PETITION CASE No. 2662

The petition of Interborough Rapid Transit Company respectfully shows:

FIRST: That for more than three years last past the rapid transit railroad operations of petitioner have been conducted at a substantial loss, that is, that its revenues have been insufficient to pay, in full, the operating expenses, taxes, rentals due to the City of New York under subway contracts Nos. 1 and 2, the rental payable for the elevated lines of the Manhattan Railway Company and the fixed charges upon the

First Mortgage Bonds and Three Year Notes of petitioner, the proceeds of which have been utilized in carrying out its obligations under the subway contracts and the elevated certificates.

SECOND: That the financial difficulties which have confronted, and continue to confront petitioner have had the effect of impairing its credit to such an extent that under existing conditions a receivership could not long be averted nor could the additional funds required for needed improvements be obtained; that because of this situation, and in order to obviate the inevitable expense and loss to security holders which would result from a receivership, committees of the holders of securities of petitioner, and of the Manhattan Railway Company, after lengthy deliberations, formulated and adopted a Plan of Readjustment, dated May 1, 1922; that certain "Modifications" to said Plan were subsequently agreed upon; that copies of said Plan and Modifications are before the Commission as exhibits to another petition filed contemporaneously herewith; that said Plan and Modifications have also been formally adopted and approved by petitioner.

THIRD: That pursuant to said Plan, and deposit agreements made as a result thereof between security holders and committees representing (1) petitioner's First and Refunding Mortgage 5% Gold Bonds and its Three Year Secured Convertible 7% Gold Notes, (2) the Interborough-Metropolitan 4½% Collateral Trust Bonds, and (3) the Manhattan Railway Company capital stock, the owners of each of said class of securities have deposited their holdings in such substantial amounts with the depositories named in the separate deposit agreements as evidence of their participation in and approval of the Plan of Readjustment, that petitioner believes that, within a reasonably short period, said committees will unite in declaring the Plan of Readjustment operative and in effect.

FOURTH: That as an essential part of said Plan, and in order to provide in part for the necessary capital expenditures of petitioner during the period ending June 30, 1926, with the approval of the Commission, petitioner proposes to create an issue of \$15,000,000 principal amount of its unsecured Ten Year 6% Gold Notes, with a present issuance and disposal of \$10,500,000 principal amount thereof; such notes to be dated as of October 1, 1922, maturing October 1, 1932, with interest payable semi-annually on April 1st and October 1st of each year, and to be redeemable at the option of petitioner on any interest date at par and a premium equivalent to one-quarter of one per centum for each unexpired interest period of the term.

FIFTH: That the entire contemplated issue of \$10,500,000 principal amount of such new notes of petitioner has been underwritten by a responsible syndicate, at par and accrued interest, upon the undertaking by petitioner, in the event of its ability to issue said notes, to pay to such syndicate as a commission or consideration for its underwriting the sum of \$532,500.

SIXTH: That it is proposed, with the approval of the Commission, to issue said new notes under and pursuant to an indenture between petitioner and the Guaranty Trust Company of New York as Trustee, substantially in the form hereto annexed.

WHEREFORE, petitioner prays for the consent and approval of the Commission to the issuance of Ten million five hundred thousand (\$10,500,000) Dollars principal amount of 6% unsecured notes, dated as of October 1, 1922, maturing October 1, 1932, with interest payable semi-annually on the first days of April and October in each year, the proceeds thereof to be utilized in defraying the cost of capital requirements of petitioner or in retiring certain of petitioner's outstanding capital obligations.

Hearing Orders in these proceedings were adopted October 7, 1922, and the date of hearings fixed as October 17, 1922. Testimony for all proceedings was taken at one hearing on the date stated, namely, October 17, 1922. Further facts appear in the orders and opinion below. The Orders adopted are as follows:

Order After Rehearing Allowing Pledge of Bonds of the
Face Value of \$27,570,000.

CASE No. 2182

SECTION 1. Application was made to the Public Service Commission for the First District by Interborough Rapid Transit Company by its petition, dated and verified February 19, 1917, under the provisions of the Public Service Commissions Law, for the consent of the Commission to the issuance by said company of \$16,436,000 face amount of 5% bonds under and secured by its first and refunding mortgage dated March 20, 1913, claimed to be necessary for purposes in said petition set forth, in addition to the bonds authorized to be issued under said mortgage by order of the Commission made and filed March 20, 1913, in Case No. 1614. A hearing was duly had upon said petition before the Public Service Commission for the First District, Hon. William Hayward, Travis H. Whitney, Henry W. Hodge and Charles S. Hervey, Commissioners, presiding. Said application was amended by said company as to the amount of proceeds to be applied to certain purposes as therein stated, by a letter dated March 26, 1917. The Commission thereafter made and filed its order dated May 25, 1917, wherein and whereby the Commission allowed an issue by said company of \$11,436,000 face value of said bonds. The said company thereafter, by petition dated and verified July 10, 1917, applied for a rehearing as to the said order of the Commission made and filed herein May 25, 1917. The Commission denied said application for a rehearing but directed that the said company be heard with reference to a resettlement of the said order. The said application was made and heard before the Public Service Commission for the First District, Hon. Oscar S. Straus, Chairman, William Hayward, Travis H. Whitney, Henry W. Hodge and Charles S. Hervey, Commissioners, presiding, and the Commission thereafter made and filed its order on the 27th day of July, 1917, wherein and whereby the Commission allowed an issue by said company of \$16,436,000 face value of said bonds. Application was subsequently made to the Public Service Commission for the First District by the said Interborough Rapid Transit Company by its petition dated and verified June 24, 1918, praying that a rehearing be granted therein and stating that it had been impossible to sell the bonds under the terms of the said order of July 27, 1917, and that it was necessary to secure the moneys required through the issue of short-term notes secured by petitioner's bonds as collateral and that for that purpose as well as providing for increased cost because of war-time prices the approval by the Commission of the issue and disposal either by sale or pledge of a greater amount of bonds than those theretofore authorized would be necessary; a rehearing on said petition was duly had before the Public Service Commission, Hon. Oscar S. Straus, Chairman, Travis H. Whitney, Charles S. Hervey, Frederick J. H. Kracke and Charles Bulkley Hubbell, Commissioners, presiding, and the Commission there-

after made and filed its order herein on the 5th day of September, 1918, wherein and whereby the Commission allowed an issue by said company of \$28,489,000 of said bonds and the disposal of the same by the pledge at not less than 64% of the face value thereof as collateral security for the Three Year Secured Convertible 7% Gold Notes of said company, dated as of September 1, 1918, the issuance and disposal of which notes was authorized by order of the Public Service Commission for the First District in Case No. 2306 made and filed on September 5, 1918.

Application having been now made to the Transit Commission by the said Interborough Rapid Transit Company by its petition dated and verified October 4, 1922, praying that a rehearing be granted herein, and stating that in accordance with said order of September 5, 1918, the \$28,489,000 principal amount of bonds authorized thereby had been duly issued and pledged as collateral as therein provided; that of the said bonds so issued and so pledged, \$27,570,000 principal amount remained, as of September 1, 1922, as collateral in the hands of the Trustee of the Three Year Secured Convertible 7% Gold Notes of said Interborough Rapid Transit Company (the \$919,000 difference between the amount of bonds so remaining and the \$28,489,000 originally pledged, after having been released from the lien of the indentures securing said notes in the manner therein provided, in part had been utilized for payments into the sinking fund under the first and refunding mortgage of said Interborough Rapid Transit Company and in part are now held by said company in its treasury as re-acquired securities); and that because of the impaired financial condition of said Interborough Rapid Transit Company the extension or refunding of \$34,330,000 principal amount of its existing Three Year Secured Convertible 7% Gold Notes for a period of ten years from September 1, 1922, could be obtained only by the retention or repledge of all of the first and refunding mortgage 5% gold bonds of said company now remaining in the possession of the Trustee as collateral for said Three Year Notes, and that to accomplish that result the approval by the Transit Commission of the disposal by pledge of \$27,570,000 principal amount of the bonds heretofore authorized herein, in the manner and for the purposes set forth in said petition dated October 4, 1922, will be necessary; and the Commission having granted such rehearing, and the same having been had before the Commission, Hon. George McAneny, Chairman, Leroy T. Harkness and John F. O'Ryan, Commissioners, presiding; James L. Quackenbush, Esq., and Ralph Norton, Esq., appearing for the Interborough Rapid Transit Company, and Hon. John P. O'Brien, Corporation Counsel, Edgar J. Kohler, Esq., Assistant Corporation Counsel, and William A. DeFord, Esq., Special Assistant Corporation Counsel, appearing for The City of New York, and Hon. Clarence J. Shearn and George O. Redington, Esq., appearing for the Commission, and the Commission having heard the testimony and documents presented, together with the argument of counsel, and due consideration having been had, and it being now the opinion of the Commission that the disposal and use of said bonds of the Interborough Rapid Transit Company as collateral is necessary to and reasonably required by the said company for the acquisition of property or for the construction and completion and extension or improvement of its facilities, or for the discharge or lawful refunding of certain of its obligations, and that except as to the following specified amounts of said bonds heretofore authorized to be issued herein to procure money to be applied to the purposes following, to wit:

(1) \$820,485, or so much thereof as may be necessary to pay expenses of the sale of the Three Year Secured Convertible 7% Gold Notes of the Interborough Rapid Transit Company dated September 1, 1918, originally secured by the pledge of the bonds heretofore authorized herein, and to make up the discount or deficiency in the amount realized upon the sale of said notes to net not less than 95½% of par of said notes.

(2) \$11,690,000, or so much thereof as may be necessary to make up discount by reason of conversion of any of the new issue of Ten Year Secured Convertible 7% Gold Notes of Interborough Rapid Transit Company dated September 1, 1922, into said bonds at not less than 80, or the sale of said bonds pledged as collateral security for said new issue of Ten Year Secured Convertible 7% Gold Notes dated September 1, 1922, at not less than 57½; said purposes are not in whole or in part reasonably chargeable to operating expenses or income.

SECTION 2. It is ORDERED that the Transit Commission does hereby approve the disposal by said Interborough Rapid Transit Company of \$27,570,000, principal amount of the first and refunding mortgage bonds of said company heretofore authorized herein, by pledge of the same at not less than 57½% of the face value thereof as collateral security for ten (10) year 7% notes of said company, dated as of September 1, 1922 redeemable on any semi-annual interest date in whole or in part, if approved or so directed by the Commission, provided the company has or may secure funds available therefor at par and a premium equivalent to one-quarter of one per cent. for each unexpired semi-annual interest period of the ten year term; the said notes being convertible at any time up to within thirty days of maturity and thereafter until maturity, provided notice of election to convert and the date thereof be given at least thirty days prior to maturity into said bonds at the following rates; at 80% of the par or face value of said bonds if conversion be made at any time prior to September 1, 1925; at 85% of the par or face value of said bonds if conversion be made at any time after September 1, 1925, and prior to September 1, 1928; at 90% of the par or face value of said bonds if conversion be made at any time after September 1, 1928, and prior to September 1, 1932.

SECTION 3. It is ORDERED that the disposal of said bonds is authorized upon the conditions following (each of which is hereby specifically made a condition of such approval) and not otherwise, to wit:

FIRST: That all of the bonds hereby authorized shall be amortized prior to their maturity out of the income of the Interborough Rapid Transit Company; provided, however, that such amortization may be effected through the operation of the sinking fund provided for by the terms of the aforesaid first and refunding mortgage dated March 20, 1913; and provided furthermore that all of the bonds issued to pay the cost of said replacements under the authority of Subdivision (3) of paragraph First of Section 3 of the order made herein by the Public Service Commission for the First District, September 5, 1918, shall be thus amortized out of the income of the company and redeemed and cancelled by it in the manner, and at the rate, provided by the said mortgage; that no part of the sum set aside for the amortization of the said bonds issued to pay the cost of said replacements shall be in any way charged against The City of New York or its share or interest in the income or earnings of the railroads under the provisions of the certificates hereinbefore referred to; and that no part of the said replacements or the cost thereof, when amortized, as above provided, shall be credited to the capital account of the said company.

SECOND: That the said company shall keep separate, true and accurate accounts, showing the receipt and application in detail of the proceeds of the sale or disposal of the bonds heretofore authorized to be issued herein, and on or before the twentieth day of each month the company shall make and file with the Secretary of the Commission verified reports to the Commission, stating the sale or sales of the said bonds during the preceding month, the terms and conditions of sale, the moneys realized therefrom, and the details of the use and application of said moneys toward the separate purposes specified in paragraph First of the order of the Public Service Commission made herein on September 5, 1918; and the said accounts, vouchers and records shall be open to audit, and may be audited, from time to time, by accountants and examiners designated for such purpose by the Commission.

THIRD: In case any of the proceeds of the aforementioned bonds hereby authorized for the purposes specified in Subdivision (1) or (2) of paragraph First of Section 3 of the order of the Public Service Commission made herein September 5, 1918, shall be expended by the said company and the amount so expended or any portion thereof shall not be included in, or made a part of, the actual cost as finally determined pursuant to the certificate described in Subdivision (1) or Subdivision (2), the company shall forthwith after such determination return to the fund derived from the issue of bonds heretofore authorized herein the amount not so included in any such determination. None of the proceeds of the aforementioned bonds heretofore authorized herein for purposes specified in Subdivision (3) of paragraph First of Section 3 of the order of the Public Service Commission made herein September 5, 1918, shall be expended by the said company for any of the purposes specified therein, unless the company shall, at least ten days prior to such expenditure, file with the Commission a statement showing the estimated amount of such proposed expenditure and the application thereof, together with such plans or drawings as may be necessary to show the application and proposed use thereof. In case any of the proceeds of the aforementioned bonds heretofore authorized herein for the purposes specified in Subdivision (3) of paragraph First of Section 3 of the order of the Public Service Commission made herein September 5, 1918, shall be expended by said company and the Commission or the Court on review of an order of the Commission shall determine that the amount so expended, or any portion thereof, has been expended for a purpose not specified in said Subdivision (3), the company shall forthwith after such determination return to the fund derived from the issue of bonds heretofore authorized herein the said amount so disallowed.

FOURTH: That at the time fixed in the said additional track certificate dated March 19, 1913, for the presentation to the Commission of a statement showing the actual cost of plant and structure and of equipment, the company shall file with the Commission a statement in writing setting forth in detail the cost of all property replaced or abandoned in connection with the improvements paid for out of the proceeds of bonds heretofore authorized herein or authorized for the same purpose by the order of March 20, 1913, made in Case No. 1614.

FIFTH: That nothing in the petition herein or in this order shall prejudice any right otherwise possessed by The City of New York or the Commission (1) to object to any expenditure of proceeds of the bonds heretofore authorized herein or authorized by the order of March 20, 1913, made in Case No. 1614, included in any statement required to be presented to the Commission pursuant to the additional track certificate or extension certificate dated March 19, 1913, or (2) to investigate

further and to question and reject as a claimed credit or charge under the contract between The City of New York and the Interborough Rapid Transit Company, dated March 19, 1913, or the said certificates, any expenditure of proceeds of such bonds, or any part thereof, even though claimed by the company to have been made for purposes specified in Subdivision (3) of paragraph First of Section 3 of the order of the Public Service Commission made herein September 5, 1918, or Subdivision (7) of paragraph First of Section 5 of the order of March 20, 1913, made and filed in Case No. 1614.

SIXTH: That any sums accruing to the company, directly or indirectly, from interest on the deposit, or from the investment of any proceeds of the bonds heretofore authorized herein shall be considered and accounted for as and as though a part of, but in addition to, the proceeds of the bonds; provided, however, that this condition shall be without prejudice to any right or claim which the said company may otherwise have against The City of New York, or The City of New York may otherwise have against the said company, by reason of any obligation on the part of the said City or the said Company under or pursuant to any provision of a certain contract dated March 19, 1913, between The City of New York, acting by the Public Service Commission for the First District, and the Interborough Rapid Transit Company, or under the additional track certificate or extension certificate dated March 19, 1913, hereinbefore referred to.

SEVENTH: That neither the action of the Commission nor any provision of the petition herein or of this order shall be deemed to be in any respect in derogation or limitation of any right and power otherwise possessed by the Commission to require, in a subsequent proceeding or by future order in said case, the amortization, reclassification of accounts or other suitable provision, as to expenditures deemed to be for purposes in the nature of replacements or chargeable under the Public Service Commissions Law to operating expenses or income.

EIGHTH: That neither the action of the Commission nor any provision of the petition herein or of this order shall be deemed to be in any respect in abrogation, limitation or modification of any right of The City of New York or of the Commission under or pursuant to either of said certificates or the right of The City of New York or the Commission to disallow, object to and contest any items of claimed expenditure or charge by the Interborough Rapid Transit Company under the provisions of either of said certificates or any expenditure of any part of the proceeds of the bonds heretofore authorized herein.

SECTION 4. It IS ORDERED that this order take effect on the 27th day of October, 1922, and continue in force until otherwise ordered by the Commission, and that within ten days after service upon it of a copy of this order said company notify the Commission whether this order is accepted and will be obeyed.

Order After Rehearing Allowing Pledge of Bonds of the
Face Value of \$32,032,000.

CASE No. 2218

SECTION 1. Application was made to the Public Service Commission for the First District by Interborough Rapid Transit Company by its petition dated and verified June 11, 1917, under the provisions of the Public Service Commissions Law for the consent of the Commission to

the issuance by said company of \$25,483,772 face amount of 5% bonds under and secured by its first and refunding mortgage dated March 20, 1913, claimed to be necessary for purposes in said petition set forth, in addition to the bonds authorized to be issued under said mortgage by order of the Commission made and filed March 20, 1913, in Case No. 1614. A hearing was duly had upon said petition before the Public Service Commission for the First District, Hon. Oscar S. Straus, Chairman, William Hayward, Travis H. Whitney, Henry W. Hodge and Charles S. Hervey, Commissioners, presiding, and the Commission thereafter made and filed its order on the 27th day of July, 1917, wherein and whereby the Commission allowed an issue by said company of \$23,053,000 face value of said bonds. Application was subsequently made to the Public Service Commission for the First District by the said Interborough Rapid Transit Company by its petition dated and verified June 24, 1918, praying that a rehearing be granted therein and stating that it had been impossible to sell the bonds under the terms of the said order of July 27, 1917, and that it was necessary to secure the moneys required through the issue of short term notes secured by petitioner's bonds as collateral, and that for that purpose as well as providing for increased cost because of war-time prices the approval by the Commission of the issue and disposal either by sale or pledge of a greater amount of bonds than those theretofore authorized would be necessary; a rehearing on said petition was duly had before the Public Service Commission, Hon. Oscar S. Straus, Chairman, Travis H. Whitney, Charles S. Hervey, Frederick J. H. Kracke and Charles Bulkley Hubbell, Commissioners, presiding, and the Commission thereafter made and filed its order herein on the 5th day of September, 1918, wherein and whereby the Commission allowed an issue by said company of 33,098,500 of said bonds and the disposal of the same by the pledge at not less than 64% of the face value thereof as collateral security for the Three Year Secured Convertible 7% Gold Notes of said company, dated as of September 1, 1918, the issuance and disposal of which notes was authorized by order of the Public Service Commission for the First District in Case No. 2306 made and filed on September 5, 1918.

Application having been now made to the Transit Commission by the said Interborough Rapid Transit Company by its petition dated and verified October 4, 1922, praying that a rehearing be granted herein, and stating that in accordance with said order of September 5, 1918, \$33,098,000 principal amount of the \$33,098,500 authorized thereby had been duly issued and pledged as collateral as therein provided; that of the said bonds so issued and so pledged \$32,032,000 principal amount remained, as of September 1, 1922, as collateral in the hands of the Trustee of the Three Year Secured Convertible 7% Gold Notes of said Interborough Rapid Transit Company (the \$1,066,000 difference between the amount of bonds so remaining and the \$33,098,000 originally pledged, after having been released from the lien of the indentures securing said notes in the manner therein provided, in part had been utilized for payments into the sinking fund under the first and refunding mortgage of said Interborough Rapid Transit Company and in part are now held by said company in its treasury as re-acquired securities); that because of the impaired financial condition of said Interborough Rapid Transit Company the extension or refunding of \$34,330,000 principal amount of its existing Three Year Secured Convertible 7% Gold Notes for a period of ten years from September 1, 1922, could be obtained only by the retention or repledge of all of the first and refunding mortgage 5% gold bonds of said company now remaining in the possession of the Trustee as collateral for said Three Year Notes, and that to accomplish that result the approval by the Transit Commission of the disposal by pledge of

\$32,032,000 principal amount of the bonds heretofore authorized herein, in the manner and for the purposes set forth in said petition dated October 4, 1922, will be necessary; and the Commission having granted such rehearing, and the same having been had before the Commission, Hon. George McAneny, Chairman, Leroy T. Harkness and John F. O'Ryan, Commissioners, presiding; James L. Quackenbush, Esq., and Ralph Norton, Esq., appearing for the Interborough Rapid Transit Company, and Hon. John P. O'Brien, Corporation Counsel, Edgar J. Kohler, Esq., Assistant Corporation Counsel, and William A. DeFord, Esq., Special Assistant Corporation Counsel, appearing for The City of New York, and Hon. Clarence J. Shearn and George O. Redington, Esq., appearing for the Commission, and the Commission having heard the testimony and documents presented, together with the argument of counsel, and due consideration having been had, and it being now the opinion of the said Commission that the disposal and use of said bonds of the Interborough Rapid Transit Company as collateral is necessary to and reasonably required by the said company for the acquisition of property or for the construction and completion and extension or improvement of its facilities, or for the discharge or lawful refunding of certain of its obligations, and that except as to the following specified amounts of said bonds heretofore authorized to be issued herein to procure money to be applied to the purposes following, to wit:

(1) \$953,235, or so much thereof as may be necessary to pay expenses of the sale of the Three Year Secured Convertible 7% Gold Notes of the Interborough Rapid Transit Company dated September 1, 1918, originally secured by the pledge of the bonds heretofore authorized herein, and to make up the discount or deficiency in the amount realized upon the sale of said notes to net not less than 95½% of par of said notes.

(2) \$13,582,000, or so much thereof as may be necessary to make up discount by reason of conversion of any of the new issue of Ten Year Secured Convertible 7% Gold Notes of Interborough Rapid Transit Company dated September 1, 1922, into said bonds at not less than 80, or the sale of said bonds pledged as collateral security for said new issue of Ten Year Secured Convertible 7% Gold Notes dated September 1, 1922, at not less than 57½; said purposes are not in whole or in part reasonably chargeable to operating expenses or income.

SECTION 2. IT IS ORDERED that the Transit Commission does hereby approve the disposal by said Interborough Rapid Transit Company of \$32,032,000 principal amount of the first and refunding mortgage bonds of said company heretofore authorized herein, by pledge of the same at not less than 57½% of the face value thereof as collateral security for ten (10) year 7% notes of said company, dated as of September 1, 1922, redeemable on any semi-annual interest date in whole or in part, if approved or so directed by the Commission, provided the company has or may secure funds available therefor at par and a premium equivalent to one-quarter of one per cent. for each unexpired semi-annual interest period of the ten-year term; the said notes being convertible at any time up to within thirty days of maturity and thereafter until maturity, provided notice of election to convert and the date thereof be given at least thirty days prior to maturity into said bonds at the following rates: at 80% of the par or face value of said bonds if conversion be made at any time prior to September 1, 1925; at 85% of the par or face value of said bonds if conversion be made at any time after September 1, 1925, and prior to September 1, 1928; at 90% of the par or face value of said bonds if conversion be made at any time after September 1, 1928, and prior to September 1, 1932.

SECTION 3. It is ORDERED that the disposal of said bonds is authorized upon the conditions following (each of which is hereby specifically made a condition of such approval) and not otherwise, to wit:

FIRST: That all of the bonds heretofore authorized herein shall be amortized prior to the maturity of the said bonds out of the income of the company; provided, however, that the said amortization may be effected through the operation of the sinking fund provided for by the aforesaid first and refunding mortgage.

SECOND: That the said company shall keep separate, true and accurate accounts, showing the receipt and application in detail of the proceeds of the sale or disposal of the bonds heretofore authorized to be issued herein, and on or before the twentieth day of each month the company shall make and file with the Secretary of the Commission verified reports to the Commission, stating the sale or sales of the said bonds during the preceding month, the terms and conditions of sale, the moneys realized therefrom, and the details of the use and application of said moneys toward the separate purposes specified in paragraph First of the order of the Public Service Commission made herein on September 5, 1918; and the said accounts, vouchers and records shall be open to audit, and may be audited, from time to time, by accountants and examiners designated for such purpose by the Commission.

THIRD: In case any of the proceeds of the aforementioned bonds hereby authorized for the purposes specified in Subdivision 1 of paragraph First of Section 3 of the order of the Public Service Commission made herein on September 5, 1918, shall be expended by the said company and the amounts so expended or any portion thereof shall not be included in or made a part of the said cost of equipment as finally determined pursuant to the said Contract No. 3 referred to in Subdivision 1 of the said order, the company shall, forthwith after such determination, return to the fund derived from the issue of bonds hereby authorized the amount not so included in any such determination.

FOURTH: That any sums accruing to the company, directly or indirectly, from interest on the deposit, or from the investment, of any proceeds of the bonds hereby authorized, shall be considered and accounted for as and as though a part of, but in addition to, the proceeds of the said bonds; provided, however, that this condition shall be without prejudice to any right or claim which the said company may otherwise have against The City of New York, or The City of New York may otherwise have against the said company, by reason of any obligation on the part of the said City or the said company under or pursuant to any provision of the said Contract No. 3.

FIFTH: That neither the action of the Commission nor any provision of the petition herein or of this order shall be deemed to be in any respect in abrogation, limitation or modification of any right of The City of New York or of the Commission under or pursuant to the said Contract No. 3, or in derogation of any of the rights and powers of the Commission under Subdivision (6) of paragraph 18 of Article II of Contract No. 3, or the right of The City of New York or the Commission to disallow, object to and contest any items of claimed expenditure or charge by the Interborough Rapid Transit Company under the provisions of Contract No. 3 or any expenditure of any part of the proceeds of the bonds heretofore authorized herein.

SIXTH: That neither the action of the Commission nor any provision of the petition herein or of this order shall be deemed to be in any respect in derogation or limitation of any right and power otherwise

possessed by the Commission to require, in a subsequent proceeding or by future order in this case, the amortization, reclassification of accounts or other suitable provision, as to expenditures deemed to be for purposes in the nature of replacements or chargeable under the Public Service Commissions Law to operating expenses or income.

SECTION 4. IT IS ORDERED that this order take effect on the 27th day of October, 1922, and continue in force until otherwise ordered by the Commission, and that within ten days after service upon it of a copy of this order said company notify the Commission whether this order is accepted and will be obeyed.

Order Authorizing Issue of Notes of the
Face Value of \$34,330,000.

CASE No. 2306

SECTION 1. Application having been made to the Transit Commission by Interborough Rapid Transit Company by its petition dated and verified October 4, 1922, for a rehearing herein and for the consent of the Commission to the issuance by said company of Thirty-four Million three hundred and thirty thousand dollars (\$34,330,000) face value of 7% notes, dated as of September 1, 1922, maturing September 1, 1932, convertible at any time up to within thirty days of maturity, and thereafter until maturity, provided notice of election to convert and the date thereof be given at least thirty days prior to maturity into 5 per cent. bonds of said company at the following rates: at 80% of the par or face value of said bonds if conversion be made at any time prior to September 1, 1925; at 85% of the par or face value of said bonds if conversion be made at any time after September 1, 1925, and prior to September 1, 1928; at 90% of the par or face value of said bonds if conversion be made at any time after September 1, 1928, and prior to September 1, 1932; the issue of which notes is claimed to be necessary for purposes in said petition set forth; and a hearing having been duly had upon said petition before the Commission, Hon. George McAneny, Chairman; Leroy T. Harkness and John F. O'Ryan, Commissioners, presiding; James L. Quackenbush, Esq., and Ralph Norton, Esq., appearing for the Interborough Rapid Transit Company, and Hon. John P. O'Brien, Corporation Counsel; Edgar J. Kohler, Esq., Assistant Corporation Counsel, and William A. DeFord, Esq., Special Assistant Corporation Counsel, appearing for The City of New York, and Hon. Clarence J. Shearn and George O. Redington, Esq., appearing for the Commission, and the Commission having heard the testimony and documents presented, together with the argument of counsel, and due consideration of the same having been had, and it being now the opinion of the Commission that the issuance and disposal of said notes of Interborough Rapid Transit Company to the amount of \$34,330,000 face value, payable at a period of more than twelve months after the date thereof, is necessary to and reasonably required by said company for the discharge or lawful refunding of certain of its obligations, to wit, \$34,330,000 face value of its Three Year Secured Convertible 7% Gold Notes, dated as of September 1, 1918, the issuance and sale of which was approved by order of the Public Service Commission for the First District made herein on September 5, 1918, and which notes as heretofore extended became due and payable September 1, 1922; and that said purposes are not in whole or in part reasonably chargeable to operating expenses or to income.

SECTION 2. It is ORDERED that the Transit Commission does hereby authorize the issue by said Interborough Rapid Transit Company of \$34,330,000 face value of principal of notes of said company dated as of September 1, 1922, maturing September 1, 1932, bearing interest at 7% per annum, payable semi-annually, secured by \$59,602,000 face value of principal of 5% bonds of the Interborough Rapid Transit Company issued under its first and refunding mortgage dated March 20, 1913, maturing January 1, 1966 (being part of the bonds authorized to be issued by the Public Service Commission for the First District by its orders made and filed September 5, 1918, in Cases Nos. 2182 and 2218), the pledge of which \$59,602,000 principal amount of bonds as collateral security for the payment of said notes was authorized and approved by this Commission by certain further orders made and filed October 27, 1922, after rehearing in Cases Nos. 2182 and 2218; the said notes being redeemable in whole or in part, if approved or so directed by the Commission, provided the company has or may secure funds available therefor, on any semi-annual interest date at par and a premium of one-quarter of 1% for each unexpired semi-annual interest period of the ten year term; the said notes being convertible at any time up to within thirty days of maturity and thereafter until maturity, provided notice of election to convert and the date thereof be made at least thirty days prior to maturity into said bonds at the following rates: at 80% of the par or face value of said bonds if conversion be made at any time prior to September 1, 1925; at 85% of the par or face value of said bonds if conversion be made at any time after September 1, 1925, and prior to September 1, 1928; at 90% of the par or face value of said bonds if conversion be made at any time after September 1, 1928, and prior to September 1, 1932; the said notes to be issued under and in pursuance of the terms of the collateral indenture securing such notes between Interborough Rapid Transit Company and Bankers Trust Company, Trustee, dated September 1, 1922.

SECTION 3. It is ORDERED that said issue of notes is authorized upon the conditions following (each of which is hereby specifically made a condition of the approval and issue of such notes) and not otherwise, to wit:

FIRST: That the said Interborough Rapid Transit Company shall issue and dispose of said notes only in retirement and discharge at par of \$34,330,000 principal amount of its Three Year Secured Convertible 7% Gold Notes dated as of September 1, 1918.

SECOND: That all of the notes hereby authorized shall be amortized prior to the maturity of the said bonds securing the same out of the income of the Interborough Rapid Transit Company; provided, however, that such amortization may be effected through the operation of the sinking fund provided for by the terms of the aforesaid first and refunding mortgage dated March 20, 1913; and provided, further, that all of the notes or bonds of which the proceeds are to be used to pay the cost of replacements under authority of the order of the Public Service Commission for the First District, made and filed herein on September 5, 1918, shall be thus amortized out of the income of the company and redeemed and cancelled by it in the manner and at the rate provided by the said mortgage; that no part of the sum set aside for the amortization of the said notes or bonds issued to pay the cost of said replacements shall be in any way charged against The City of New York or its share or interest in the income or earnings of the railroads under the provisions of the certificates hereinbefore referred to; and that no part of the said replacements or the cost thereof, when amortized as above provided, shall be credited to the capital account of the said company.

THIRD: That the said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale or disposal of the notes hereby authorized to be issued and on or before the twentieth day of each month the company shall make and file with the Secretary of the Commission verified reports to the Commission stating the sale or sales of the said notes during the previous month, the terms and conditions of sale, the moneys realized therefrom and the use and application of said moneys toward the separate purposes specified in paragraph First above; and said accounts, vouchers and records shall be open to audit and may be audited from time to time by accountants and examiners designated for such purpose by the Commission.

FOURTH: In case any of the proceeds of the aforementioned notes hereby authorized for the purposes specified in Subdivision (1) of paragraph First of Section 3 of this order, shall be expended by the said company, and the amounts so expended or any portion thereof shall not be included in or made a part of the cost of equipment as finally determined pursuant to the said Contract No. 3, referred to in Subdivision (1), the company shall forthwith, after such determination, return to the fund derived from the issue of notes hereby authorized, the amount not so included in any such determination.

FIFTH: That nothing in the petition herein or in this order shall prejudice any right otherwise possessed by The City of New York or the Commission (1) to object to any expenditure of proceeds of the notes heretofore or hereby authorized in this proceeding or bonds authorized by the order of March 20, 1913, made in Case No. 1614, included in any statement required to be presented to the Commission pursuant to the additional track certificate or extension certificates, dated March 19, 1913, or (2) to investigate further and to question and reject as a claimed credit or charge under the contract between The City of New York and the Interborough Rapid Transit Company, dated March 19, 1913, or the said certificates, any expenditure of proceeds of such notes, or any part thereof, even though claimed by the company to have been made for purposes specified in Subdivision (4) of paragraph First of Section 3 of the order of the Public Service Commission for the First District made and filed herein on September 5, 1918, or Subdivision (7) of paragraph First of Section 5 of the order of March 20, 1913, made and filed in Case No. 1614.

SIXTH: That any sums accruing to the company, directly or indirectly, from interest on the deposit, or from the investment, of any proceeds of the notes heretofore or hereby authorized in this proceeding, shall be considered and accounted for as and as though a part of, but in addition to, the proceeds of the notes; provided, however, that this condition shall be without prejudice to any right or claim which the said company may otherwise have against The City of New York, or The City of New York may otherwise have against the said company, by reason of any obligation on the part of the said city or the said company under or pursuant to any provision of a certain contract, dated March 19, 1913, between The City of New York, acting by the Public Service Commission for the First District, and the Interborough Rapid Transit Company, or under the additional track certificate or extension certificate, dated March 19, 1913.

SEVENTH: That neither the action of the Commission nor any provision of the petition or of this order shall be deemed to be in any respect in derogation or limitation of any right and power otherwise possessed by the Commission to require, in a subsequent proceeding or by future

order in this case, the amortization, reclassification of accounts or other suitable provision, as to expenditures deemed to be for purposes in the nature of replacements or chargeable under the Public Service Commissions Law to operating expenses or income.

EIGHTH: That neither the action of the Commission nor any provision of the petition herein or this order shall be deemed to be in any respect in abrogation, limitation or modification of any right of The City of New York or of the Commission under or pursuant to the said Contract No. 3 or either of the said certificates or in derogation of any of the rights or powers of the Commission under Subdivision (6) of paragraph 18 of Article II of Contract No. 3, or the right of The City of New York or the Commission to disallow, object to and contest any items of claimed expenditure or charge by the Interborough Rapid Transit Company under the provisions of Contract No. 3 of either of said certificates or any expenditure of any part of the proceeds of the notes heretofore or hereby authorized in this proceeding.

SECTION 4. It is ordered that this order take effect on the 27th day of October, 1922, and continue in force until otherwise ordered by the Commission, and that within ten days after service upon it of a copy of this order, the said company shall notify the Commission whether the terms of this order are accepted and will be obeyed.

Final Order Authorizing Issue of Notes
of the Face Value of \$10,500,000.

CASE No. 2662

SECTION 1. Application having been made to the Transit Commission by Interborough Rapid Transit Company, by its petition, dated and verified October 4, 1922, for the consent and approval of the Commission, to the issuance by said company of Ten Million Five hundred thousand (\$10,500,000) dollars face value of Unsecured 6% Gold Notes, dated as of October 1, 1922, maturing October 1, 1932, with interest payable semi-annually on the first days of April and October in each year, the issue of which notes is claimed to be necessary for the purposes in said petition set forth; and a hearing having been duly had upon said petition before the Commission, Hon. George McAneny, Chairman; LeRoy T. Harkness, John F. O'Ryan, Commissioners, presiding; James L. Quackenbush, Esq., and Ralph Norton, Esq., appearing for the Interborough Rapid Transit Company; Hon. John P. O'Brien, Corporation Counsel, Edgar J. Kohler, Esq., Assistant Corporation Counsel, and William A. DeFord, Esq., Special Assistant Corporation Counsel, appearing for The City of New York, and Hon. Clarence J. Shearn and George O. Redington, Esq., appearing for the Commission, and the Commission having heard the testimony and the documents presented, together with the argument of counsel, and due consideration having been had, and it being now the opinion of the Commission:

(A) That the money to be procured by the issue of said Ten million five hundred thousand (\$10,500,000) Dollars Unsecured 6% Gold Notes, payable at a period of more than twelve (12) months after the date thereof, is reasonably required by said company for the acquisition of property or for the construction, completion, extension or improvement of its facilities or for the discharge or lawful refunding of certain of its obligations, and particularly for the purposes which are hereinafter stated in this order, and

(B) That except as to the sum of Five hundred and thirty-two thousand five hundred (\$532,500) Dollars, the amount necessary to pay expenses and underwriting commission incidental to the sale of said notes, said purposes are not in whole or in part reasonably chargeable to operating expenses or to income.

SECTION 2. It is ordered that the Transit Commission does hereby authorize the issue by the said Interborough Rapid Transit Company of Ten million five hundred thousand (\$10,500,000) Dollars, principal amount of Unsecured 6% Gold Notes of said company, dated as of October 1, 1922, maturing October 1, 1932, bearing interest at the rate of 6% per annum, payable semi-annually on the first days of March and October in each year, and redeemable in whole or in part, if approved or so directed by the Commission, provided the company has or may secure funds available therefor, on any semi-annual interest date at par and a premium equivalent to one-quarter of 1% for each unexpired interest period of the ten year term, under and in pursuance of the terms of the indenture securing said notes between Interborough Rapid Transit Company and Guaranty Trust Company of New York, as Trustee, dated October 1, 1922.

SECTION 3. It is ordered that said issue of notes is authorized upon the conditions following (each of which is hereby specifically made a condition of the approval and the issuance of such notes) and not otherwise, to wit:

FIRST: That said Interborough Rapid Transit Company shall dispose of the said notes hereby authorized at a price not less than par, and the proceeds thereof shall be applied only to the following purposes, that is to say:

(1) To pay the cost of equipment of the Rapid Transit Railroad under and pursuant to a certain contract (referred to hereinafter as Contract No. 3) dated March 19, 1913, between The City of New York, acting by the Public Service Commission for the First District, and Interborough Rapid Transit Company, as such cost may be determined pursuant to said contract, including in such equipment any improvement, reconstruction, modification or changes authorized by the Contract No. 3, and made pursuant thereto, and the power houses, sub-stations or other equipment forming part of the existing equipment under contracts known as Contract No. 1 and Contract No. 2..... \$ 6,153,060

(2) To refund and discharge 10% of the outstanding \$38,144,400 principal amount of the Three Year Secured Convertible 7% Gold Notes of Interborough Rapid Transit Company, the issuance of which was approved and authorized by order of the Public Service Commission for the First District, in Case No. 2306, made and filed on September 5, 1918, not exceeding..... 3,814,440

(3) To pay the expenses of the sale of the notes hereby authorized, being the commission or compensation payable for their underwriting, not exceeding.... 532,500

Total\$10,500,000

SECOND: That the said company shall keep separate, true and accurate accounts, showing the receipt and application in detail of the proceeds of the sale or disposal of the notes hereby authorized to be issued, and on or before the twentieth day of each month, the company shall make and file with the Secretary of the Commission verified reports to the Commission, stating the sale or sales of the said notes during the

preceding month, the terms and conditions of sale, the moneys realized therefrom, and the details of the use and application of said moneys toward the separate purposes specified in paragraph First above; and the said accounts, vouchers and records shall be open to audit, and may be audited, from time to time, by accountants and examiners designated for such purpose by the Commission.

THIRD: In case any of the proceeds of the aforementioned notes hereby authorized for the purposes specified in Subdivision 1 of paragraph First of Section 3 of this order shall be expended by the said company and the amounts so expended or any portion thereof shall not be included in or made a part of the said cost of equipment as finally determined pursuant to the said Contract No. 3 referred to in said Subdivision 1, the company shall, forthwith after such determination, return to the fund derived from the issue of notes hereby authorized the amount not so included in any such determination.

FOURTH: That any sums accruing to the company, directly or indirectly, from interest on the deposit, or from the investment, of any proceeds of the notes hereby authorized shall be considered and accounted for as and though a part of, but in addition to, the proceeds of the said notes; provided, however, that this condition shall be without prejudice to any right or claim which the said company may otherwise have against The City of New York, or The City of New York may otherwise have against the said company by reason of any obligation on the part of the said city or the said company under or pursuant to any provision of the said Contract No. 3.

FIFTH: That neither the action of the Commission nor any provision of the petition herein nor of this order shall be deemed to be in any respect in abrogation, limitation or modification of any right of The City of New York or of the Commission under or pursuant to the said Contract No. 3, or in derogation of any of the rights and powers of the Commission under Subdivision (6) of paragraph 18 of Article II of Contract No. 3, or the right of The City of New York or the Commission to disallow, object to and contest any items of claimed expenditure or charge by the Interborough Rapid Transit Company under the provisions of Contract No. 3 or any expenditure of any part of the proceeds of the notes hereby authorized.

SIXTH: That neither the action of the Commission or any provision of the petition herein nor of this order shall be deemed to be in any respect in derogation or limitation of any right and power otherwise possessed by the Commission to require, in a subsequent proceeding or by future order in this case, the amortization, reclassification of accounts or other suitable provisions, as to expenditures deemed to be for purposes in the nature of replacements or chargeable under the Public Service Commissions Law to operating expenses or income.

SECTION 4. It is ordered that this order take effect on the 27th day of October, 1922, and continue in force until otherwise ordered by the Commission, and that within ten (10) days after service upon it of a copy of this order, said Company notify the Commission whether this order is accepted and will be obeyed.

OPINION

HARKNESS, Commissioner: Although technically the matters that are before the Commission in the above-entitled proceedings consist of applications for the modification of orders in these outstanding

proceedings and for the approval of the issuance of \$10,500,000 new six per cent. notes, the Commission, in pursuance of the policy announced to representatives of the security holders when the Interborough reorganization plan was first broached, has not limited itself to the proceedings technically before it, but has considered the entire plan, believing that a matter of this importance should be disposed of through a broad, comprehensive study of the entire situation and not be limited to certain elements in the plan that, under the statute, require Commission approval.

As a basis for this consideration, it will be helpful briefly to show the situation as it existed about eighteen months ago when the Transit Commission took office, and then state the results to be expected from the plan of reorganization:

In brief, the situation of Interborough Rapid Transit Company early in 1921 was: It was controlled by Interborough-Consolidated Company, a holding corporation which had almost the entire capital stocks of Interborough Rapid Transit Company, and the New York Railways System, the latter comprising most of the surface lines in the Borough of Manhattan. The Interborough-Consolidated Company was capitalized at over \$114,000,000 and had in addition \$70,000,000 of 4½% bonds outstanding, secured by the pledge of its holdings of Interborough Rapid Transit Company stock. It was largely to financial manoeuvres in and about Interborough-Consolidated Company and speculation in its stock that blame must be laid for the excessive dividends declared by Interborough Rapid Transit Company during and prior to the war that so depleted its cash reserves and liquid assets.

The Interborough Rapid Transit Company had outstanding over \$160,000,000 of its 50 year 5% bonds issued (with the exception of approximately \$50,000,000 for earlier financing) to provide means to carry out its engagements with the City of New York (Contract No. 3 of March 19, 1913) for the construction and equipment of new rapid transit lines. It also had outstanding nearly \$60,000,000 of such bonds which were pledged as collateral security for \$38,144,400 of three year 7% notes becoming due on September 1, 1921, which was issued in 1918 when war-time financial conditions precluded the sale of the 5% bonds.

The terms of the lease made in 1903 for the Manhattan Elevated System were, in view of lessened net earning capacity, becoming

increasingly burdensome. This lease provided, in addition to paying interest on over \$40,000,000 of Manhattan bonds, together with taxes and incidentals, that the Interborough Company should pay as a rental charge, and irrespective of whether or not the amount was earned, 7% per annum on \$60,000,000 of Manhattan stock. This dividend rental amounted to \$4,200,000 a year.

The annual report of the Interborough Company for the fiscal year ending June 30, 1921, indicated a deficit, after paying the Manhattan rental of \$4,464,826.65. In an endeavor to make both ends meet the operating officials had admittedly cut down service, thereby adding to the already intolerable congestion and further bringing the company into sharp collision with the public and increasing the embittered antagonism.

In order temporarily to ease the situation, the Commission authorized the extension of the 7% notes, becoming due on September 1, 1921, for one year on an 8% basis. This by itself, however, merely afforded a year's additional time to prepare to meet this large capital obligation. At about the same time the Commission informally served notice on the representatives of the Interborough Company that the existing depreciated service could not be allowed to continue, and that the company must prepare to meet large requirements in the way of additional equipment and increased service. The representatives of the company were also informed that, on a proper reorganization and on a conservative financial basis, the lines could profitably be operated on a five-cent fare and the Commission would not consider any request for increases in rates of fare. The Commission's informal notice that it would require additional equipment and increased service was last spring translated into definite official orders, requiring the provision, at stated periods, of 350 additional cars, with incidental power additions and very materially increased service in non-rush hours.

Because of the financial condition of the company, suits were instituted to throw it into the hands of a receiver, which came before Judge Mayer. Judge Mayer very properly held these applications in abeyance and exercised his influence very effectively upon the various classes of security holders to induce them to consider a reorganization plan that would lift the company out of its present financial distress and prepare it to meet the needed additions to equipment and service.

In September, 1921, the Commission made public the outlines of its comprehensive plan for the reorganization of all the transit lines in the City. As this plan, in view of its scope and the radical changes it contemplated in existing organization and financing, would require considerable time to work out, it was deemed necessary by those acting for the Interborough and Manhattan security holders to develop a plan of readjustment for the Interborough Company alone that would take care of immediate difficulties and pave the way for its inclusion in the more comprehensive plans of the Commission. One large difficulty in the way of consummating the Commission's plans, or for that matter any plan, was the large number of security holders that had to be dealt with and the inability in the case of the Manhattan Railway Company to deal with any board or committee which could represent the stockholders.

In preliminary informal discussions that the Transit Commissioners had last spring with Judge Mayer and the representatives of the various security groups, the Commissioners, without committing themselves in the matter of final judgment, laid down certain fundamental conditions that they would in any event require to be met. These were:

(1) That the plan did not contemplate any increase in fare beyond five cents; or any reduction of the service for the five-cent fare now given on the Interborough and Manhattan Lines.

(2) That it should provide funds for new cars, to develop power service and other equipment to meet the present and future service orders of the Commission.

(3) That it should do away wholly with the Interborough-Consolidated Company and its \$114,000,000 of securities.

(4) That it should eliminate the fixed 7% return on Manhattan stock paid by the Interborough Company by way of rental for the elevated properties, amounting to \$4,200,000 a year, and that the rental paid to the Manhattan Company be reduced to a reasonable rate, payable only in years in which it was earned.

(5) That it should limit the possible future dividends of the Interborough Company to 7%, to be payable only if earned.

(6) That no dividends whatever should be paid upon Interborough stock during the next five years; the revenue, within the proposed limitation, to be devoted exclusively to service.

(7) That it should provide for public representation in the new board of directors; and, finally

(8) That it should be considered as a preliminary step in the carrying out of the Commission's broader plan for municipal ownership and unification of all the useful transit properties in the City.

The plan developed from these conferences had upon the date of the applications received the assent of about 90% of the Interborough-Metropolitan 4½% bonds and Interborough Rapid Transit stock, about 85% of Manhattan Railway Company stock, about 90% of Interborough notes and the full amount required by the plan in the case of the Interborough 5% bonds.

In general terms the plan provides for

(1) The elimination of the fixed 7% Manhattan dividend rental and the substitution of a return, *if earned*. This return, if earned, is fixed at:

For the fiscal year ending July 1, 1923	3%
For the fiscal year ending July 1, 1924	4%
For the fiscal year ending July 1, 1925	5%
For each subsequent year thereafter	5%

(2) The foreclosure of the mortgage securing the \$70,000,000 4½% Interborough-Metropolitan bonds and the complete divorce of the Interborough Company from Interborough-Consolidated Corporation.

(3) Extension of the outstanding matured 7% notes for ten years from September 1, 1922.

(4) Postponement of sinking fund payments under the mortgage securing the Interborough 5% bonds for a period of five years beginning January 1, 1921.

(5) The authorization of a new issue of \$15,000,000 of 10 year 6% notes of which \$10,500,000 is presently to be issued. Such new present issue to be absorbed by holders of the Interborough-Metropolitan 4½% bonds.

(6) The members of the board of directors of the Interborough Company to be elected by various group interests as follows: 9 by the Interborough stockholders, 3 by Interborough bondholders, 3 by Manhattan stockholders and 3 by public authority.

(7) The dividend rate on Interborough stock is restricted to a maximum of 7% and no dividends to be declared for the next five years.

Outside of earnings, the plan will provide:

(a) By postponement of sinking fund payments on Interborough bonds accruing during the three and a half years from July 1, 1922:

\$7,612,500

(b) Proceeds of sale of new 6% notes 10,500,000

or a total of 18,112,500

In addition, the earnings available for service and proper corporate purposes will largely be increased by the elimination of the present 7% Manhattan Dividend rental. The extension of the Interborough 7% notes for ten years will relieve the company of its present embarrassment of having this heavy matured debt hanging over its head and give time for the resumption of more normal conditions when complete and adequate refinancing may be effected. The Interborough directorate is to contain responsible representation of all the groups (including the City) having large financial interests in the properties operated by the company.

It is by a comparison of these results with the existing conditions of the Interborough Company that the beneficial results of the plan are apparent. Furthermore, the only alternative of the plan would seem to be a receivership which would be the source of incalculable damage to security holders and the public as well. In the formulation of the plan and the remarkable success in securing the assent of thousands of widely scattered security holders, and thus avoiding receiverships and probable disintegration, Judge Mayer and those associated with him have performed a service not only to the security holders but to the public as well.

Furthermore, all these changes show substantial progress toward the reorganization contemplated in the Commission's comprehensive plan and those changes, together with the ability now to deal with a compact, responsible representation of the several group interests, will greatly facilitate putting the larger plan into effect.

The technical applications before the Commission cover the modification of existing orders of the Commission in three old proceedings and the approval of the new 6% note issue in a new proceeding. I recommend the granting of all the applications, and appropriate orders to this effect are now submitted herewith.

There are a few matters connected with the Plan and these applications that require this further brief comment:

It should be understood that the approval of this plan does not involve any approval of the principal of 999-year leases of public utility properties. The Commission is opposed to them, and looks to the adoption of its comprehensive plan to eliminate them from New York City transit once and for all. Nor can the Commission's action in these cases be taken as in any sense fixing or determining valuations of any of the Interborough or Manhattan properties.

In the hearings before the Commission on these applications the Corporation Counsel of the City suggested the incorporation of some provision in the orders with respect to the maintenance of the five-cent fare. As was stated from the bench upon the hearings, the contract between the City and the Interborough Company already provides explicitly for a five-cent fare. Furthermore, the successful reorganization of the transit companies with recovery from war-time inflation has made the question of an increase in fare only of practical importance to politicians who strive to use it for political effect.

It is also suggested by the Corporation Counsel that provision be made for public representation in, or stronger control over, the voting trustees, who are to elect the directors under the provision for group representation. In the absence of express statutory authority, this voting trust agreement is necessary to accomplish the desired result. By its own terms, however, it indicates that it is a temporary arrangement only, and it contemplates the enactment of legislation authorizing such group representation. It therefore seems to me that this voting trust agreement, in its present form, will take care of the immediate situation, and that little difficulty should be experienced in obtaining legislation that will permanently cover the situation.

The Corporation Counsel also suggested the inclusion of a stipulation in the orders similar to that in previous similar orders reserving any rights of the City under Contract No. 3. Proper provisions to this end are incorporated in the orders submitted herewith.

In the Matter of the Hearing on the motion of the Commission on the question of alterations and changes in the following grade crossing with the tracks of the LONG ISLAND RAILROAD COMPANY: Hempstead and Jamaica Turnpike.

CASE No. 1264

In the Matter of the Hearing on the motion of the Commission on the question of alterations and changes in the following grade crossings with the tracks of the LONG ISLAND RAILROAD COMPANY: Bennett or Baylis Avenue; Wertland Avenue; Creed Avenue; Madison Avenue.

CASE No. 1380

Elimination of Grade Crossings—Steam Railroad Corporation—Modification of Final Order—Artificial Drain Undesirable—Grade of Streets Across Railroad to be Raised so as to Permit Natural Flow of Water from North to South—Recommendation.—The elimination of the grade crossings by the Commission's Order is impracticable. In order to drain the pockets ordered, it would be necessary to construct an artificial drain about three miles in length, consisting of a 24 inch pipe, costing about \$150,000. This drain will not fit in with the permanent sewer system to be installed at some future time and is undesirable. All concerned will be best served by having the streets across the railroad raised so as to permit of a natural flow from north to south. Recommended that the final order be changed accordingly.

Hearing closed December 6, 1922. Order adopted and Report approved December 7, 1922.

This proceeding came before the Commission upon receipt of the following petition of The Long Island Railroad Company by Ralph Peters, President, dated November 1, 1922, and verified November 8, 1922.

PETITION

The Long Island Railroad Company for its petition herein respectfully shows and alleges:

I. That it is a domestic railroad corporation, owning and operating a railroad with various branches and connecting lines on Long Island and through the City of New York in the State of New York. That the Main Line of its railroad is operated by steam and electric power through Hollis, Bellaire and Queens in the Borough and County of Queens in the City and State of New York and thence eastwardly through Nassau County in said State.

II. That said railroad consisting of three running tracks with sidings and passing tracks, crosses 212th Street, (Bennett Avenue) and Hempstead Avenue (Hempstead and Jamaica Turnpike) in Bellaire and 218th Street (Wertland Avenue) Creed Boulevard (Creed Avenue) and 222nd Street (Madison Avenue) in Queens at grade. That all of said crossings are located within the City of New York.

III. That on December 8th, 1911, the Public Service Commission of the State of New York for the First District made an order in these cases (Nos.

1264 and 1380) that certain alterations be made on the Main Line of your petitioners' railroad and on the above named streets, and requiring in general the depression of the streets from four to six and six-tenths feet at the crossings and the elevation of the railroad approximately thirteen feet so as to carry the railroad over the streets and provide a fourteen foot clearance at each crossing.

IV. That owing to various efforts on the part of the property owners to obtain a modification of this order, to the World War and Federal control and operation of railroads, to increased and increasing costs of labor and materials and to lack of funds, the terms of said order were never carried out and said grade crossings were never eliminated as contemplated thereby.

V. That falling costs and the improved financial condition of your petitioner now make it desirable that the work be undertaken and your petitioner stands ready to proceed therewith at an early date.

VI. That in the meantime, however, and during the eleven years which have elapsed since said order was made, conditions upon which the order was based have substantially changed, adjacent property has been improved and developed and grades which were relied upon in working out drainage problems incidental to the project have been altered. The plan contemplated for the drainage of the streets in question, is now impracticable and if the streets should be depressed as required by said order, an artificial sewer or drainage pipe some three miles in length and traversing various city streets would be required to be installed at great expense. As the territory developed, this drain would prove inadequate and the cost thereof would be wasted.

VII. That as an alternative to this costly and wasteful plan, 212th Street, (Bennett Avenue) should be raised approximately two feet; no change should be made in the grade of Hempstead Avenue (Hempstead and Jamaica Turnpike); 218th Street, (Wertland Avenue) should be raised approximately three feet; Creed Boulevard (Creed Avenue) should be raised approximately three and one-half feet, and 222nd Street (Madison Avenue) should be lowered approximately one foot at the respective points of crossing and the railroad of your petitioner should be raised approximately twenty feet (all above their existing elevations). This treatment will provide natural and proper drainage for the streets in a southerly direction under the railroad and will accomplish far better results than any scheme of artificial drainage.

VIII. That the aforesaid facts and circumstances and the substitute and modified plans above set forth for eliminating these grade crossings have been discussed and worked out in conference with the Chief Engineer of the Board of Estimate and Apportionment of the City of New York.

Wherefore your petitioner prays that the said order of the Public Service Commission, dated December 8th, 1911, be modified in accordance with the plan as outlined above to the end that your petitioner may proceed with the elimination of said grade crossings.

On November 22, 1922, the Commission adopted an Order directing that a hearing be had upon the above petition December 6, 1922, and designating Lincoln C. Andrews, Chief Executive Officer of the Commission, to conduct said hearing. Thereafter, on December 7, 1922, the following Order and report were adopted and approved respectively.

(For the order of December 8, 1911, in these cases see 2 P. S. C. R. [1st Dist. N. Y.] 763.)

ORDER MODIFYING FINAL ORDER DATED DECEMBER 8, 1911

The Public Service Commission for the First District having on the 8th day of December, 1911, adopted a final order herein directing certain alterations and changes to be made on the main line of the Long Island Railroad Company in the streets, avenues and highways in the Borough of Queens, City of New York, above specified, and the Long Island Railroad Company having by petition verified November 8, 1922, made application to the Commission for a modification of the said order herein dated December 8, 1911, and the Commission having on the 27th day of November, 1922, adopted an order herein directing a hearing be had herein on said application on the 6th day of December, 1922 at 10:30 A. M., said order authorizing and designating the Chief Executive Officer to conduct the hearing and said hearing having been duly held, the Chief Executive Officer having made his report dated December 7, 1922, to the Commission recommending that the said order herein dated December 8, 1911 be modified as herein indicated and said report having been approved:

ORDERED that the order herein dated December 8, 1911 be and the same hereby is modified as follows:

ORDERED that The Long Island Railroad Company be and it is hereby directed to proceed with the work of eliminating the grade crossings at the intersection of its main line in the streets, avenues and highways in the Borough of Queens, above specified, establishing and maintaining the grades of said streets, avenue and highways and the railroad's right of way substantially as shown in yellow on maps or plans introduced in evidence at the hearing in this proceeding on December 8, 1922, marked Company's Exhibits 3 and 4 and identified as follows:

"Queens Elimination—Proposed Grade Revision Eliminate Artificial Street Drainage, Public Service Order Grade, December 8, 1911."

"L. I. R. R., Main Line, Queens Elimination. Proposed Grade Revision to Eliminate Artificial Street Drainage, October 16, 1922."

FURTHER ORDERED that the said Order herein, dated December 8, 1911, in so far as it is or may be inconsistent with the terms hereof be and the same hereby is abrogated and that in all other respects the said Order herein, dated December 8, 1911, shall be and remain in full force and effect.

REPORT

ANDREWS, *Chief Executive Officer*: With reference to the hearing held before me on December 6, 1922, on the application of the Long Island Railroad for modification in the final order of the Commission directing the elimination of five grade crossings through Queens:

I am convinced that the elimination of the grade crossings by the Commission's order is impracticable. In order to drain the pockets as ordered, it would be necessary to construct an artificial drain about three miles in length, consisting of a 24-inch pipe, costing about \$150,000.

This drain will not fit in with the permanent sewer system to be installed at some future time (estimated at about five to ten years). When the permanent sewer system is installed the money expended on this artificial drain becomes a complete loss.

Such a drain, in my opinion, is undesirable as it is makeshift in character and before long will inadequately take off the storm water because of the steady and rapid development of the territory.

It seems to me that all concerned will be best served by having the streets across the railroad raised so as to permit of a natural flow from the north to the south. This can be accomplished by having the grade of the streets and railroad substantially as shown on the plans and profiles submitted in evidence at the hearing.

I therefore, recommend, that the final order be changed so as to read that the grade crossings in this case shall be eliminated, having grades of streets and railroad substantially as shown in yellow on the exhibits submitted in evidence by the Long Island Railroad.

Dated, December 7, 1922.

In the Matter of the Application of New York & Queens County Railway Company for authority to issue 60 equal monthly Car Trust Notes of \$730 each, bearing interest at the rate of 6% per annum, under Section 55 of the Public Service Commission Law, and for approval of the Car Trust Lease.

CASE No. 2663

Car Trust Notes and Lease—Street Surface Railroad Corporation—Application of Company—Approval of Notes and Lease Requested.—This is an application made by New York & Queens County Railway Company in pursuance of Section 55 of the Public Service Commission Law for an order of the Commission authorizing the issue by said New York & Queens County Railway Company of 60 equal Car Trust Notes of \$730 each and bearing interest at the rate of 6% per annum, one each of said Car Trust Notes coming due each month together with interest thereon and interest on the remainder of such Car Trust Notes as shall not yet be due, payable to the order of Safety Car Trust Corporation as provided in and secured by a certain Car Trust Lease agreement dated September 1, 1922, between said Safety Car Trust Corporation and New York & Queens County Railway Company. The Commission's approval of said Car Trust Lease is also requested.

Car Trust Notes and Lease—Street Surface Railroad Corporation—Type of Car Proposed to be Obtained in so-called "One Man Car—Advantages of Same—Type well Known, Modern and Up-to-Date—Used so Generally as to have become Standardized.—Each of the cars which it is proposed to obtain is designed and intended to be operated by one man, thus reducing the amount of platform expense, by which is meant the time and wages of motormen and conductors, to about one-half of the amount of such expense in the case of a car operated by two men. Furthermore it appears that the weight of such a one-man car is only about one-half, or even less than one-half, of the weight of the ordinary two-man car and that consequently the power consumption for such a one-man car would be only approximately

one-half of the power consumption for a two-man car because the power consumption is approximately proportionate to the weight of a car. In addition it appears that the wear and tear upon rails and tracks would be less in the case of the lighter car. These one-man cars have also certain safety devices which tend to eliminate accidents to passengers. The type of the cars desired by the petitioner is a well-known type which is generally admitted to be the most modern of up-to-date type of economical street surface railroad car yet developed and used so generally as to have become practically standardized.

Car Trust Notes and Lease—Street Surface Railroad Corporation—Corporation Counsel Urged Petition be Denied—Reasons Therefor—Probable Change of Administration of Commission—Municipal Bus System—Petitioner not Complying with Franchise Obligations—Reason stated for Denying Petition Insufficient—Matters called to Attention of Commission because Involving Question of Policy.—At the hearing a representative of the Corporation Counsel appeared in behalf of the City and urged that, in view of a possible or probable change of administration of the Commission, and of a possible or probable institution of a municipal bus system, in the future, the application should be denied or else a long adjournment should be granted in the matter, and also urged that the petition be denied upon the ground that the petitioner was not complying with its franchise obligations inasmuch as it is the franchise obligation of the petitioner to operate through service, for a single five cent fare, over not only the lines now being operated by the petitioner but also the lines of the petitioner which since last May have been in the custody and control of, and operated as a separate system by, the receivers of the mortgaged property of the portion of the petitioner's lines formerly belonging to the Steinway Railway Company of Long Island City. These matters are called to the attention of the Commission as particularly involving questions of policy for its consideration, although the opinion is expressed that the possibility of a change of administration of the Commission and the possibility of the institution of a municipal bus system which might affect the petitioner are not sufficient reasons for denying the application nor granting a long adjournment, neither is the existence of serious questions as to the extent of the petitioner's franchise obligations while parts of its lines are in receivership require that this application be denied.

Car Trust Notes and Lease—Street Surface Railroad Corporation—Petitioner has Shown 12 New Cars Reasonably Required—Recommendation.—The petitioner has sufficiently shown that the twelve new one-man cars are reasonably required by it, regardless of whether or not the lines now under receivership shall be restored, that the use of these cars will result in economy to it and improvement in service to the public, and that the proposed Car Trust Notes and Car Trust Lease is the only practicable arrangement whereby the petitioner will be able to obtain such cars. Recommended that the Commission approve the proposed Car Trust Notes and Car Trust Lease.

Hearings closed December 4, 1922. Order adopted and Report and Opinion approved December 7, 1922.

This case came before the Commission upon receipt of the following petition of the New York and Queens County Railway Company, by W. O. Wood, President, dated October 27, 1922, and verified October 28, 1922.

PETITION

The petition of New York & Queens County Railway Company respectfully shows:

(1) That your petitioner is a street railway corporation duly organized and existing under the laws of the State of New York. A copy of the Certificate of Incorporation of your petitioner is on file with the Commission.

(2) That your petitioner owns and operates certain street railway lines in the First, Second and Third Wards of the County and Borough of Queens, City and State of New York.

(3) That your petitioner on the 24th day of July, 1922, entered into a contract with the National Safety Car & Equipment Company, a corporation organized under the laws of the State of Missouri for the purchase of 12 double and safety motor passenger cars. A copy of said contract is attached hereto and made a part hereof.

(4) That by the terms of said agreement with the National Safety Car & Equipment Company, your petitioner is obligated to pay 40% in cash on shipments of said cars and the balance to be covered by the Car Trust Lease and 60 equal monthly notes of \$730 each, and bearing interest at the rate of 6%. A copy of said Car Trust Lease is attached hereto and made a part of this petition.

(5) That your petitioner is without funds to pay in full for and to acquire title to said cars forthwith on the delivery thereof, and proposes to make payment for same out of its earnings, one each of said car trust notes coming due monthly, beginning the 15th day of November, 1922, and the last one coming due on the 15th day of October, 1927. When all of said notes have been paid title to the cars will vest in your petitioner.

WHEREFORE, your petitioner prays that an order of the Commission be made authorizing:

- (a) The issue of said 60 car trust notes numbered 1 to 60, and
- (b) The approval of said Car Trust Lease.

On November 8, 1922, the Commission adopted a Hearing Order directing that a hearing be had in this matter on November 6, 1922. The hearing was held on that day, November 29, and December 4, 1922, after which on December 7, 1922, the following order and report and opinion were adopted and approved respectively.

ORDER AUTHORIZING ISSUE OF CAR TRUST NOTES AND APPROVING CAR
TRUST LEASE

SECTION 1. Application having been made to the Transit Commission, pursuant to the provisions of the Public Service Commission Law, by New York & Queens County Railway Company by its petition dated October 27, 1922, verified on October 28, 1922, for the consent of the Transit Commission to the issuance by said New York & Queens County Railway Company of 60 equal Car Trust Notes of \$730 each and bearing interest at the rate of 6% per annum, one each of said Car Notes coming due each month together with interest thereon and interest on the remainder of such Car Trust Notes as shall not yet be due, payable to the order of Safety Car Trust Corporation as provided in and secured by a certain Car Trust Lease agreement dated September 1, 1922 whereby said Safety Car Trust Corporation is to lease to said New York & Queens County Railway Company twelve (12) Standard Type Double End Safety Motor Passenger Cars with the provision that upon the payment by the lessee of all of said notes as they become due and its compliance with the provisions of said Car Trust Lease the ownership of said cars is to become

vested in the lessee, and said New York & Queens County Railway Company having also in said petition requested that the Transit Commission approve of said Car Trust Lease, the purpose of said Car Trust Notes and said Car Trust Lease securing them being for the lessee to obtain the delivery and use and eventually the ownership of said twelve (12) cars which are the twelve (12) cars which by a certain agreement dated July 24, 1922 and entered into on October 20, 1922 the National Safety Car & Equipment Company agreed to construct for said New York & Queens County Railway Company for the total sum of \$73,020, of which sum it was provided in said agreement that \$29,220 being approximately 40% should be paid in cash on shipment of the cars and the balance of \$43,800 being approximately 60% should be covered by such a Car Trust Lease and Car Trust Notes; and a hearing having been duly had upon said application before Lincoln C. Andrews, Chief Executive Officer of the Commission, who by order made by the Commission on the 8th day of November, 1922, was specially authorized and designated to conduct said hearing and to take the testimony therein and report the same to the Commission together with his opinion thereon for its decision and determination, and said Lincoln C. Andrews, having conducted said hearing and having taken the testimony therein and having reported the same to the Commission together with his opinion thereon; and it being now the opinion of the Commission that the issuance of said 60 Car Trust Notes by said New York & Queens County Railway Company to the total amount of \$43,800 face value, and the entry into said Car Trust Lease, are necessary to and reasonably required by said company for the acquisition of property, to wit, such twelve (12) cars, and that such cars are reasonably necessary to the needs of said company in the service of the public travel and will result in economy in expenses of operation:

SECTION 2. It is ordered that the Transit Commission do and hereby does authorize the execution and delivery of said Car Trust Lease between Safety Car Trust Corporation and said New York & Queens County Railway Company and the issue by the said New York & Queens County Railway Company of said 60 Car Trust Notes under and in accordance with the provisions of said Car Trust Lease agreement.

SECTION 3. IT IS HEREBY ORDERED that this order shall take effect on this 7th day of December, 1922, and shall continue in force until otherwise ordered by the Commission, and that within ten (10) days after service upon it of a copy of this order the said New York & Queens County Railway Company shall notify the Commission whether the terms of this order are accepted and will be obeyed.

REPORT AND OPINION

ANDREWS, *Chief Executive Officer*: I, Lincoln C. Andrews, Chief Executive Officer of the Transit Commission, specially authorized and designated by order of the Commission dated November 8, 1922, to conduct the hearing herein and to take the testimony and report the same to the Commission, together with my opinion thereon, do hereby report as follows:

This is an application made by New York & Queens County Railway Company in pursuance of Section 55 of the Public Service Commission Law for an order of the Commission authorizing the issue by said New York & Queens County Railway Company of 60 equal Car Trust Notes of \$730 each and bearing interest at the rate

of 6% per annum, one each of said Car Trust Notes coming due each month together with interest thereon and interest on the remainder of such Car Trust Notes as shall not yet be due, payable to the order of Safety Car Trust Corporation as provided in and secured by a certain Car Trust Lease agreement dated September 1, 1922, between said Safety Car Trust Corporation and New York & Queens County Railway Company. The Commission's approval of said Car Trust Lease is also requested.

It appears that the purpose of the Car Trust Notes and the Car Trust Lease is to consummate an arrangement whereby the petitioner would be able to obtain the use and ultimately the ownership of twelve Standard Type Double End Safety Motor Passenger Cars which are desired by the petitioner in the belief that the use of these cars would result in improved service to the public and considerable economies to the petitioner in the matter of operating expenses. In the petition it is stated that the petitioner is without funds to pay in full for and to acquire title to the twelve cars forthwith on the delivery thereof. It appears that the petitioner, on October 20, 1922, entered into an agreement with National Safety Car & Equipment Company whereby the latter company agreed to construct and deliver to the petitioner the twelve cars for the total sum of \$73,020, of which \$29,220 should be paid in cash on shipment of the cars and the balance of \$43,800 should be covered by a Car Trust Lease and sixty equal Car Trust Notes of \$730 each. The Car Trust Lease and Car Trust Notes, approval whereof is requested by the petitioner, are intended to take care of such balance of \$43,800.

Each of the cars which it is proposed to obtain is designed and intended to be operated by one man, thus reducing the amount of platform expense, by which is meant the time and wages of motor-men and conductors, to about one-half of the amount of such expense in the case of a car operated by two men. Furthermore it appears that the weight of such a one-man car is only about one-half, or even less than one-half, of the weight of the ordinary two-man car and that consequently the power consumption for such a one-man car would be only approximately one-half of the power consumption for a two-man car because the power consumption is approximately proportionate to the weight of a car. In addition it appears that the wear and tear upon rails and tracks would be less in the case of the

lighter car. These one-man cars have also certain safety devices which tend to eliminate accidents to passengers. The type of the cars desired by the petitioner is a well known type which is generally admitted to be the most modern and up-to-date type of economical street surface railroad car yet developed and used so generally as to have become practically standardized.

At the hearing the president and general manager of the petitioner stated that it was his intention to put the twelve desired cars in use on the College Point Line and that he would thereby be enabled to transfer to the Calvary Line the cars now operating on the College Point Line, such cars being of the heavy two-man type but which are now being operated by one man each; that because of such transfer he would be able to cease operating the cars as at present operated on the Calvary Line, which present operation is by means of two men on two-man cars; and that as a result of such arrangement there would be an estimated saving in platform expense alone on the Calvary Line of approximately \$351.90 per week, a sum considerably in excess of the payments which the petitioner would be required to meet under the Car Trust Lease and Car Trust Notes. At the hearing the president and general manager of the petitioner further testified that such cars as are now operated on the Calvary Line would be available in reserve, and that by the use of the new one-man cars on the College Point Line he believed that a shorter headway between cars on the College Point Line would result and thereby afford better service to the public.

At the hearing a representative of the Corporation Counsel appeared in behalf of the City and urged that, in view of a possible or probable change of administration of the Commission, and of a possible or probable institution of a municipal bus system, in the future, the application should be denied or else a long adjournment should be granted in the matter, and also urged that the petition be denied upon the ground that the petitioner was not complying with its franchise obligations inasmuch as it is the franchise obligation of the petitioner to operate through service, for a single five-cent fare, over not only the lines now being operated by the petitioner but also the lines of the petitioner which since last May have been in the custody and control of, and operated as a separate system by, the receivers of the mortgaged property of the portion of the petitioner's lines

formerly belonging to the Steinway Railway Company of Long Island City. To me it seemed that the objections above referred to were not such as to require that I should recommend a denial of the application or the granting of a long adjournment but only that I should call your attention to such objections for your consideration as to policy under the circumstances.

It was also requested on behalf of the Corporation Counsel that in case his above-mentioned requests were not granted that, at least, some adjournment be granted so that he might have an opportunity of looking into the question of whether the desired cars would, or would not, be necessary or suitable if the petitioner were to resume operating through service over the lines now being operated by the receivers and the lines now being operated by the petitioner. In pursuance of the last above-mentioned request an adjournment from November 29, 1922, to December 4, 1922, was granted by me, but at such adjourned hearing no proof was forthcoming to show that the desired cars would not be reasonably required if the petitioner should have the lines now under receivership restored to it for operation. On the contrary the evidence was to the effect that such desired cars are reasonably required by the petitioner regardless of whether or not such lines under receivership shall be restored to the petitioner for operation.

Although I am personally of opinion that the possibility of a change of administration of the Commission, and the possibility of the institution of a municipal bus system which might affect the petitioner, are not sufficient reasons for denying the application of the petitioner nor for granting a long adjournment, and although I am personally of opinion that the existence of serious questions as to the extent of the petitioner's franchise obligations while parts of its lines are in receivership does not seem to require that this application of the petitioner be denied, I call these matters to your attention as particularly involving questions of policy for your consideration. Apart from the matters just adverted to, I am of opinion that the petitioner has sufficiently shown that the twelve new one-man cars are reasonably required by the petitioner regardless of whether or not the lines now under receivership shall be restored to the petitioner, that the use of these cars will result in economy to the petitioner and improvement in service to the public, and that the pro-

posed Car Trust Notes and Car Trust Lease is the only practicable arrangement whereby the petitioner will be able to obtain such cars. I therefore

RECOMMEND that the Commission approve the proposed Car Trust Notes and Car Trust Lease.

In the Matter of the Application of the 23RD STREET RAILWAY COMPANY, under Section 184 of the Railroad Law, for approval of the Public Service Commission for the First District, for a declaration of abandonment of a portion of the railroad and certain of its franchises, in the Borough of Manhattan, City of New York.

CASE No. 2528

Abandonment of Routes and Franchises—Street Surface Railroad Company—Application.—This is an application upon the petition of the Twenty-third Street Railway Company dated August 11, 1920, for the abandonment of its routes and franchises in Second Avenue from 23rd Street to 29th Street, in 28th and 29th Streets between First and Second Avenues, and in First Avenue between 28th Street and 34th Street, all in the Borough of Manhattan and City of New York.

Abandonment of Routes and Franchises—Street Surface Railroad Company—Routes and Franchises Originally Part of Line Designed to Serve 34th Street Ferry—Queensborough Bridge and Long Island Tunnel—Utility of Routes Disappeared—Passengers on Line Less than One per Car.—The routes and franchises under consideration were originally part of a line designed primarily to serve the 34th Street Ferry. With the opening of the Queensborough Bridge and the Long Island tunnel service into Pennsylvania Station, the utility of such routes practically disappeared through the cessation of any considerable amount of passenger service over the 34th Street Ferry. The evidence shows that passengers from 23rd Street to the 34th Street Ferry amount to less than one passenger per car.

Abandonment of Routes and Franchises—Street Surface Railroad Company—Use of Second Avenue Tracks—Exchange of Transfers—Certain Inconvenience to Public.—There is, however, a considerable business between the 23rd Street Crosstown service and the Second Avenue service to the north. Because the 23rd Street Company used the Second Avenue tracks free transfers have been exchanged between these two services. This free transfer will probably disappear if this petition be granted, with the result that a transfer payment will be required on the part of from 1500 to 2000 passengers a day, and to that extent it will inconvenience the public.

Abandonment of Routes and Franchises—Street Surface Railroad Company—23rd Street Line—New York Railways System—Essential Service First Concern of Commission—Granting Petition Cuts off \$15,000 per Year of Unproductive Operating Expenses.—The 23rd Street line is a component part of the New York Railways System. This system is now in the hands of a Receiver who is making every effort to re-establish its financial

stability. Its revenues are still less than its expenses. It must practise every economy in order to get enough revenue to maintain proper service along its essential routes. This essential service is the first concern of the Commission and must be considered rather than slight inconveniences in unessential sections of the system. To grant this petition will eliminate the necessity for five cars now used in the unessential service from 23rd Street north to the 34th Street ferry, and will admit the use of these five cars in the 23rd Street Crosstown service where they are sorely needed. This will also cut off perhaps \$15,000 per year of unproductive operating expenses and make just that much more money available for the rehabilitation of equipment on other parts of the system where it is sorely needed.

Abandonment of Routes and Franchises—Street Surface Railroad Company—Recommendation.—Recommended that the application of the Twenty-third Street Railway Company be granted, and that the Transit Commission, pursuant to Section 184 of the Railroad Law, approve the Declaration of Abandonment of the said railway company dated August 10, 1920.

Hearing closed December 20, 1922. Order adopted and report and opinion approved December 27, 1922.

This case originated in August, 1920, before the Public Service Commission for the First District, predecessor board to this Commission by petition dated August 11, 1920, of the 23rd Street Railway Company by H. H. Vreeland, President, as follows:

PETITION

The Twenty-third Street Railway Company respectfully shows to the Commission:

FIRST: That it is a street railway corporation owning street railways in certain streets, avenues and public places in the Borough of Manhattan, City of New York.

SECOND: That, owing to the operation of the Long Island trains into the Pennsylvania Station, the operation of the Queensboro Subway from Astoria and Corona into the Grand Central Station and the operation of trolley cars across Queensboro Bridge to 59th Street and Second Avenue, there has been a shifting of traffic from the ferry between East 34th Street and Long Island City; it is no longer necessary for the successful operation of its road and the convenience of the public that the company continue to operate its cars between the West 23rd Street Ferry and East 34th Street Ferry.

THIRD: That on the 7th day of July, 1920, the board of directors of your Petitioner duly adopted a Declaration of Abandonment of its routes and franchises in Second Avenue from 23rd Street to 29th Street and in 28th Street between First and Second Avenues, and in 29th Street between First and Second Avenues, and in First Avenue between 28th Street and 34th Street, all in the Borough of Manhattan, City and State of New York, under and pursuant to Section 184 of the Railroad Law, and on the 10th day of August, 1920, the stockholders of your Petitioner duly ratified and adopted said Declaration of Abandonment at a special meeting duly called for that purpose, pursuant to Section 148 and 184 of the Railroad Law; that more than two-thirds of the total outstanding capital stock of your petitioner voted in favor of ratifying and adopting said Declaration of Abandonment; that said Declaration of Abandonment was adopted under the seal of this corporation and has been duly executed, and is annexed to this petition and made a part hereof.

WHEREFORE, your Petitioner respectfully requests the Commission to approve such Declaration of Abandonment and to endorse its approval upon

the Declaration of Abandonment hereto annexed for the purpose of filing the same in the office of the Secretary of State of the State of New York.

The hearing order in this case was adopted August 17, 1920, and the date of the hearing fixed for September 8, 1920. On request of the railway company's representative the hearing was adjourned from time to time through 1920, 1921 and the greater part of 1922. The hearing was finally held on December 20, 1922, after which the following order and report and opinion were adopted and approved respectively.

ORDER APPROVING ABANDONMENT

The Twenty-third Street Railway Company having by application under Section 184 of the Railroad Law by its petition, dated August 11, 1920, for the approval by the Public Service Commission for the First District of a declaration of abandonment of its routes and franchises upon and along the following streets, avenues, and highways, in the Borough of Manhattan, City of New York, to wit:

2nd Avenue from 23rd Street to 29th Street;
28th Street from 1st Avenue to 2nd Avenue;
29th Street from 1st Avenue to 2nd Avenue;
1st Avenue from 28th Street to 34th Street;

and that Commission having by order dated August 17, 1920, directed that a hearing on said application be held on the 8th day of September, 1920, and the hearing on said application having been held on that date and subsequent dates before the said Public Service Commission for the First District, and this Commission having by resolutions and certificates designated Howard Thayer Kingsbury, Counsel to this Commission (resigned), George O. Redington, Counsel to the Commission, and Lincoln C. Andrews, Chief Executive Officer to the Commission, dated July 26, 1921, March 7, 1922, and December 19, 1922, respectively, to conduct and continue to hold said hearing upon said application and to take testimony in respect thereto and report the same to the Commission with conclusions and decision for the action of the Commission thereon and said hearing having been duly held, and the said Chief Executive Officer having made his report and opinion, dated December 27, 1922, wherein he finds and decides that the routes and franchises proposed to be abandoned are no longer necessary for the successful operation of the road of the Twenty-third Street Railway Company or for the convenience of the public and said report, opinion and decision having been approved and adopted by this Commission as the decision of the Commission;

ORDERED that said declaration of abandonment of that portion of the route of said Twenty-third Street Railway Company upon and along 2nd Avenue from 23rd Street to 29th Street, 28th Street from 1st Avenue to 2nd Avenue, 29th Street from 1st Avenue to 2nd Avenue, and 1st Avenue from 28th Street to 34th Street; be and it is hereby approved and that endorsement of such approval be made upon such declaration of abandonment of said route dated August 10, 1920, and that said declaration of abandonment so endorsed be thereupon filed and recorded in the office of the Secretary of State, pursuant to Section 184 of the Railroad Law.

REPORT AND OPINION

ANDREWS, *Chief Executive Officer*: I, Lincoln C. Andrews, Chief Executive Officer, designated by order of the Transit Commission dated December 19, 1922, to conduct and hold the hearing herein, pursuant to Sections 8 and 11 of the Public Service Commission Law as amended by Chapter 134 of the Laws of 1921, hereby report as follows:

I have taken the testimony and evidence herein, and the same is herewith submitted.

This is an application upon the petition of the Twenty-third Street Railway Company, dated August 11, 1920, for the abandonment of its routes and franchises in Second Avenue from 23rd Street to 29th Street, in 28th and 29th Streets between First and Second Avenues, and in First Avenue between 28th Street and 34th Street, all in the Borough of Manhattan and City of New York. It appears by papers in the files of the Transit Commission that the Directors of the Twenty-third Street Railway Company adopted and that its stockholders ratified a Declaration of Abandonment in the usual form, dated August 10, 1920.

The routes and franchises under consideration were originally part of a line designed primarily to serve the 34th Street Ferry. With the opening of the Queensborough Bridge and the Long Island tunnel service into Pennsylvania Station, the utility of such routes practically disappeared through the cessation of any considerable amount of passenger service over the 34th Street Ferry. The road has not operated for years over the 28th Street, 1st Avenue, 29th Street sections of its franchises, but has used the tracks of the 2nd Avenue System from 28th Street north to 34th Street, and thence on the 34th Street line east to the ferry. The evidence shows that passengers from 23rd Street to the 34th Street Ferry amount to less than one passenger per car. There is obviously no justification for the continuation of this service between these points.

There is, however, a considerable business between the 23rd Street Crosstown service and the 2nd Avenue service to the north. Because the 23rd Street Company used the 2nd Avenue tracks free transfers have been exchanged between these two services. This free transfer will probably disappear if this petition be granted, with the result that a transfer payment will be required on the part

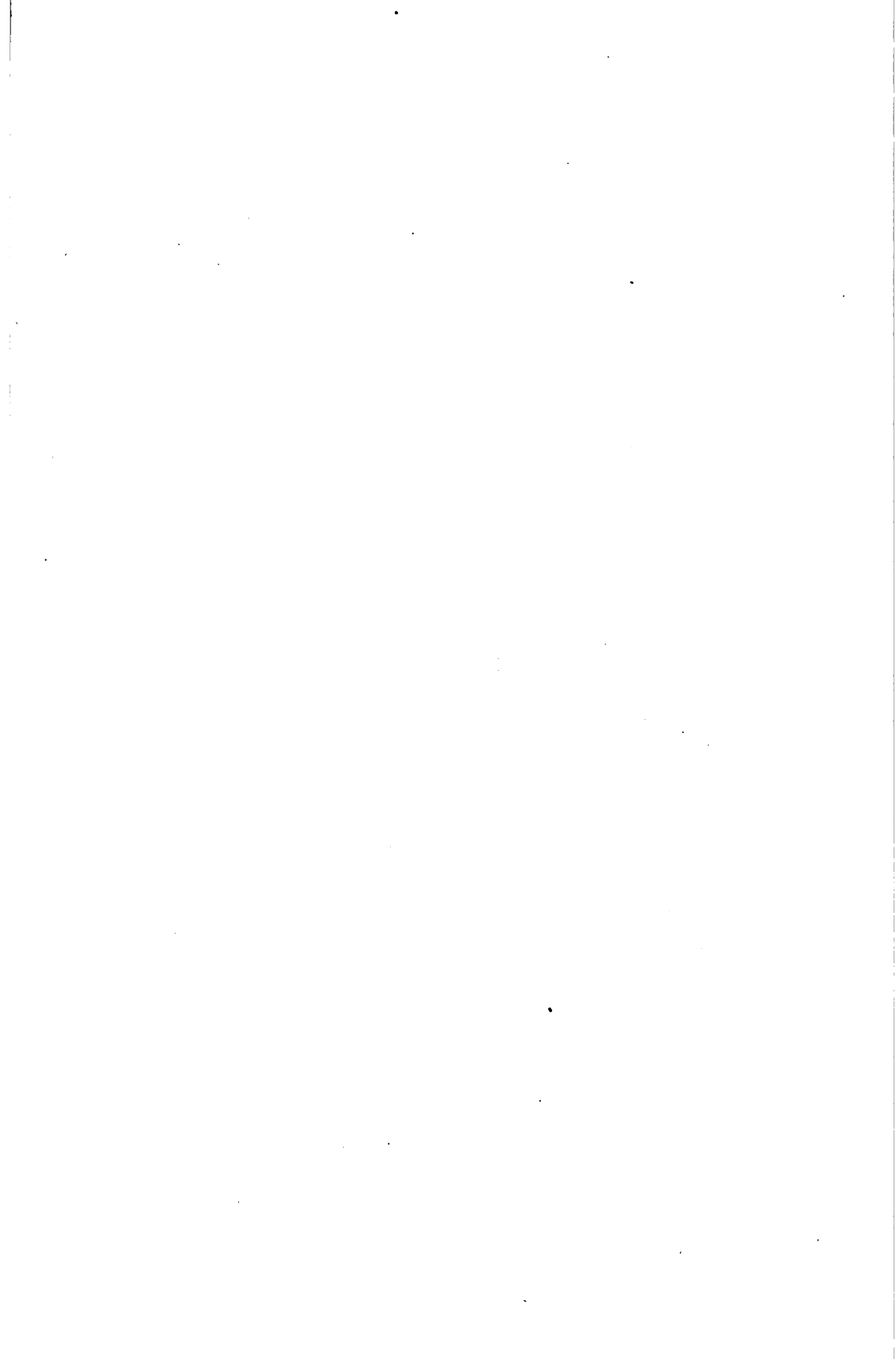
of from 1500 to 2000 passengers a day, and to that extent it will inconvenience the public.

To be weighed against the above inconvenience are the convincing facts produced in evidence in this hearing showing why the franchise should be discontinued. The 23rd Street line is a component part of the New York Railways System. This system is now in the hands of a Receiver who is making every effort to re-establish its financial stability. Its revenues are still less than its expenses. It must practise every economy in order to get enough revenue to maintain proper service along its essential routes. This essential service is the first concern of the Commission and must be considered rather than slight inconveniences in unessential sections of the system. To grant this petition will eliminate the necessity for five cars now used in the unessential service from 23rd Street north to the 34th Street Ferry, and will admit the use of these five cars in the 23rd Street Crosstown service where they are sorely needed. This will also cut off perhaps \$15,000 per year of unproductive operating expenses (Minutes, page 78) and make just that much more money available for the rehabilitation of equipment on other parts of the system where it is sorely needed.

I have given consideration to the arguments adduced at the hearing and to the facts of the case; and viewing the situation as a whole, I am fixed in my opinion that the application of the railroad is reasonable and fully sustained by the facts adduced in evidence, and I therefore

RECOMMEND that the application of the Twenty-third Street Railway Company be granted, and that the Transit Commission, pursuant to Section 184 of the Railroad Law, approve the Declaration of Abandonment of the said railway company dated August 10, 1920.

Dated, December 27, 1922.



Memoranda of Cases Decided Without the Filing of Opinions

Between January 1, 1922 and December 31, 1922.

	PAGE
Memoranda	229
Table of Cases	259

EDITORIAL NOTE AS TO MEMORANDA OF CASES

The following memoranda relate to the cases in which, from January 1, 1922, to and including December 31, 1922, decisions were rendered without the writing of formal Opinions. The memoranda accordingly include both the cases in which no Opinion was filed at any stage of the proceedings and the cases in which an Opinion was filed at some stage but Orders not set forth in connection with the Opinion were entered either before or after the time when the Opinion was filed. The memoranda do not include Orders or Resolutions extending the time of corporations within which to comply with Orders of the Commission or Orders or Resolutions directing hearings—nor do they in all cases include such details as relate to the time of taking effect of an Order, the duration of an Order and requirements as to notifying the Commission whether the terms of an Order are accepted and will be obeyed. Oftentimes, in cases in which Opinions have been adopted or filed at some stage of the proceedings, prior or subsequent action is taken without the filing of Opinions. Therefore, for a “case record” of any case, both the indices of the Opinions and the indices of the Memoranda should be consulted.

MEMORANDA OF CASES DECIDED WITHOUT THE
FILING OF OPINIONS.

In the Matter of the Hearing on the motion of the Commission on the question of the adequacy of station approaches to the JAMAICA STATION OF THE LONG ISLAND RAILROAD COMPANY.

CASE No. 1754: EXTENSION ORDERS ENTERED JANUARY 10 AND JULY 11, 1922; DISCONTINUANCE ORDER ENTERED DECEMBER 7, 1922.

STATION APPROACH—STEAM RAILROAD CORPORATION—ORDERS EXTENDING TIME TO COMPLETE CONSTRUCTION OF STATION APPROACH AND DISCONTINUING CASE.—The Orders entered January 10 and July 11, 1922, extended the time of The Long Island Railroad Company within which to complete the construction of a suitable approach to its Jamaica Station, pursuant to the Order of the Public Service Commission for the First District adopted December 2, 1913, to July 11 and October 11, 1922, respectively. The Order of December 7, 1922, discontinued and closed this Case as the completion of the construction work was for all practical purposes effected on or about October 11, 1922. (For a summary of the order of December 2, 1913, see 4 P. S. C. R. [1st Dist., N. Y.] 591.)

In the Matter of the NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, stopping of trains at Hunts Point, Casanova and Port Morris.

CASE No. 1635: MODIFYING ORDER ENTERED JANUARY 17, 1922.

OPERATION—STEAM RAILROAD CORPORATION—DISCONTINUANCE OF TRAIN SERVICE AT HUNTS POINT ROAD, CASANOVA, PORT MORRIS AND HARLEM RIVER.—The Order entered modifying the Order entered in this Case July 12, 1921, was as follows:

The Commission having on the 12th day of July, 1921, adopted an Order herein prescribing the train service to be maintained by the New York, New Haven & Hartford Railroad Company on its Harlem River Branch at Hunts Point, Casanova, Port Morris and Harlem River in both directions, which permitted the discontinuance of all train service at said points on said branch of said railroad, except one train daily in each direction, and the said New York, New Haven & Hartford Railroad Company, having by communication, dated January 12, 1922, made application to the Commission for permission to discontinue the two trains aforesaid; and Carleton S. Cooke, Assistant Counsel to the Commission, authorized to conduct hearing heretofore held herein, having by memorandum, dated January 13, 1922, approved said application, and the Chief Executive Officer of the Commission having by communication, dated

January 13, 1922, recommended that an Order be made authorizing the discontinuance of the said two trains, and sufficient reason appearing therefor;

ORDERED:

(1) That the New York, New Haven & Hartford Railroad Company be and it is hereby authorized to discontinue all train service on its Harlem River Branch at Hunts Point Road, Casanova, Port Morris and Harlem River in both directions.

(2) That this Order shall be effective only during the continuance of the existing arrangement between the New York, New Haven & Hartford Railroad Company and the New York, Westchester & Boston Railway Company to carry passengers for a single fare from or to the said stations in either direction over either or both of their respective lines.

(3) That in all other respects the said Order of the Public Service Commission for the First District, dated April 4, 1913, shall remain in force until changed or abrogated by further order of this Commission.

(4) That this Commission in making this Order does not waive and hereby reserves the right to order such changes or additions to the service of the New York, New Haven & Hartford Railroad Company on said Harlem River Branch at said stations or elsewhere as the public convenience may from time to time require and as it may be further advised.

(For the orders entered in this Case on July 12, 1921 and April 4, 1913, see 1 T. C. R. [N. Y. City] 136 and 4 P. S. C. R. [1st Dist., N. Y.] 148, respectively.)

In the Matter of the Quarterly reports to be made and filed by street railroad corporations and electric railroad corporations, within the jurisdiction of the Public Service Commission for the First District.

CASE NO. 1399: EXTENSION ORDER ENTERED FEBRUARY 21, 1922.

QUARTERLY REPORTS—STREET AND ELECTRIC RAILROAD CORPORATIONS—EXTENSION OF TIME TO FILE REPORTS.—The Order entered extended the time of the Hudson and Manhattan Railroad Company within which to file its quarterly report for the period ending December 31, 1921, pursuant to Order of the Public Service Commission for the First District dated October 6, 1911, to and including March 15, 1922. (For summary of the order of October 6, 1911, see 3 P. S. C. R. [1st Dist., N. Y.] 700.)

In the Matter of the Order of the Commission requiring street railroad corporations to file with the Commission a statement showing the wages paid to employees and also all agreements made between the street railroad corporations and their employees affecting wages.

CASE NO. 2427: ORDERS ENTERED MARCH 7 AND APRIL 11, 1922.

WAGES—STREET RAILROAD CORPORATIONS—STATEMENT AS TO WAGES PAID EMPLOYEES AND AGREEMENTS AFFECTING SAME.—The Order entered March 7, 1922, was as follows:

The Order of the Public Service Commission for the First District herein, adopted on the 7th day of October, 1919, is hereby amended to read as follows:

ORDERED:

(1) That every street railroad and stage or omnibus line within the jurisdiction of the Commission, and/or the persons or corporations owning, leasing or operating the same shall file with the Commission within 30 days after the service of this Order, a schedule of all classes and grades of employees who are paid upon the hourly or weekly basis and the rate of pay for each such class and grade of employees.

(2) That whenever change is made in the rate of pay of any of the above classes or grades of employees, such change shall be reported to the Commission within thirty days thereafter.

(3) That every such corporation and/or person named above shall file with the Commission within thirty days after the service of this Order, a copy of every active wage agreement signed by the representatives of such corporation and those of its employees, a copy of every printed scale of wages and of every printed code of working conditions and of every printed book of rules governing or affecting employees which are in force and effect at the date of filing.

(4) That whenever a new wage agreement is signed and whenever a new or amended scale of wages, code of working conditions or book of rules governing or affecting employees is printed, a copy of same shall be filed with the Commission within thirty days thereafter.

(5) That Sections (1) and (3) hereof shall not apply to such persons or corporations as have substantially complied with the said Order of the Public Service Commission for the First District, adopted herein on the 7th day of October, 1919.

(6) That this Order shall take effect immediately and continue in effect until further order of the Commission.

(7) That the Secretary of this Commission serve upon each of the said street railroad corporations, in the manner prescribed by law, a certified copy of this Order and that in pursuance of Section 23 of the Public Service Commission Law, every person and corporation so served notify the Commission forthwith in writing, of the receipt of the said certified copy of this Order.

The Order entered April 11, 1922, extended the time of the City Island Motor Bus Company, Inc., within which to comply with the terms of the order above to and including April 21, 1922.

The Order adopted October 7, 1919, amended by the Order of March 7, 1922 was substantially the same as the Order of March 7, 1922, except that it did not include stage or omnibus lines and/or the persons or corporations, owning, leasing or operating same.

In the Matter of the Application of LINDLEY M. GARRISON, as Receiver of BROOKLYN, QUEENS COUNTY & SUBURBAN RAILROAD COMPANY, for authority to charge and collect a cash rate of fare of five cents for transportation of each passenger between the Metropolitan Avenue Station of the New York Con-

solidated Railroad Company and Jamaica Avenue and a cash rate of fare of five cents for the transportation of each passenger between Dry Harbor Road and Flushing Avenue upon the Metropolitan Avenue Line of said Company, and for permission to change the existing tariff schedules without the requirement of the thirty days' notice and publication to conform to the determination on this application.

CASE No. 2588: EXTENSION ORDER ENTERED MARCH 15, 1922.

FARES—STREET SURFACE RAILROAD—CONTINUATION OF FARE ZONES.—The Order entered was as follows:

The General Manager for the Receiver of the Brooklyn, Queens County & Suburban Railroad Company, having by application in writing, dated March 4, 1922, applied to the Commission for an extension of time for one year, from March 18, 1922, for the expiration of the Order of the Public Service Commission for the First District herein, dated, March 17, 1921, and Special Permission No. 709, concerning the operation and rates of fare on the Metropolitan Avenue Line of the said Company and the Commission being of opinion that such extension should be granted and that the westerly terminus of the operation on said line should be extended to Graham Avenue, the said Order of the Public Service Commission for the First District herein, dated March 17, 1921, and Special Permission No. 709 is hereby amended to read as follows:

ORDERED:

1. That from the date of this order and to and including the 18th day of March, 1923, unless hereafter extended or modified by order of the Commission, the Receiver of the said Brooklyn, Queens County & Suburban Railroad Company and the said Brooklyn, Queens County & Suburban Railroad Company be and they hereby are, and each of them is, authorized to charge one five cent fare for the transportation of each passenger between the westerly terminus of the said Metropolitan Avenue Line and Dry Harbor Road, and another five cent fare for the transportation of each passenger between the Metropolitan Avenue station of the Myrtle Avenue elevated line of the New York Consolidated Railroad Company and the easterly terminus of said Metropolitan Avenue line.

2. That permission be and the same hereby is granted to Lindley M. Garrison, as Receiver of the Brooklyn, Queens County & Suburban Railroad Company to issue, file and put into effect, on March 18, 1922, revised sheets to the tariff schedules of the Brooklyn, Queens County & Suburban Railroad Company, showing a cash rate of fare of five cents for the transportation of each passenger between the Metropolitan Avenue station of the Myrtle Avenue elevated line of the New York Consolidated Railroad Company and Jamaica Avenue and a cash rate of fare of five cents for the transportation of each passenger between Dry Harbor Road and Graham Avenue.

3. That this Order shall take effect immediately and shall continue in force for the period specified in subdivision (1), above until changed or abrogated by further order of the Commission.

(For the Order of March 17, 1921 and Special Permission 709, see 12 P. S. C. R. [1st Dist., N. Y.], 25.)

In the Matter of the Hearing on the motion of the Commission concerning the regulations and practices of the INTERBOROUGH RAPID TRANSIT COMPANY, the NEW YORK CONSOLIDATED RAILROAD COMPANY, the NASSAU ELECTRIC RAILROAD COMPANY and the SOUTH BROOKLYN RAILWAY COMPANY in respect to the carrying of bundles, newspapers, baggage or other property by passengers on elevated and subway lines.

CASE NO. 1952: AMENDATORY ORDER ENTERED MARCH 21, 1922.

NEWSPAPERS, ETC.—RAPID TRANSIT RAILROADS—REGULATIONS AS TO CARRIAGE OF BUNDLES OF NEWSPAPERS—The Order entered was as follows:

The Public Service Commission for the First District having made an order herein, dated August 24, 1915, regulating the carrying of newspaper bundles on the subway and elevated trains of the various companies therein specified, and this Commission having on the 29th day of November, 1921, adopted an Order amending in certain respects the said Order, dated August 24, 1915, so far as it related to the New York Consolidated Railroad Company; and the Chief Executive Officer of the Commission having after conference with the General Manager of the New York Consolidated Railroad Company recommended to the Commission that the said Orders, dated August 24, 1915 and November 29, 1921, be further amended;

ORDERED that paragraph (1) of Section 2 of the said Order, dated November 29, 1921, be amended to read as follows:

1. Each bundle of newspapers carried on elevated type of car shall not be larger than thirty-six (36) inches in its largest dimension and each bundle of newspapers carried on subway type of car shall not be larger than twenty-four (24) inches in its largest dimension.

FURTHER ORDERED that in all other respects the said Orders, dated August 24, 1915 and November 29, 1921, be and the same hereby are of full force and effect.

FURTHER ORDERED that this Order shall take effect immediately and remain in full force and effect until changed or abrogated by further order of the Commission.

(For the order of November 29, 1921 and August 24, 1915, see 1 T. C. R. [N. Y. City] 150 and 6 P. S. C. R. [1st Dist., N. Y.] 427, respectively.)

In the Matter of the Hearing on the motion of the Commission, on the question of additional safety precautions at the grade crossings of the tracks of the NEW YORK CONSOLIDATED RAILROAD COMPANY on the Canarsie Line, in the Borough of Brooklyn, City of New York.

CASE NO. 1765: SUSPENSION ORDER ENTERED MARCH 28, 1922.

CROSSINGS—RAPID TRANSIT RAILROAD—SAFETY PRECAUTIONS ON CANARSIE LINE.—The Order entered was as follows:

The Public Service Commission for the First District having on March 20, 1914, adopted an Order herein, directing and requiring the New York Consolidated Railroad Company to establish and maintain certain safety precautions for the protection of passengers on its Canarsie Line and said Order having been suspended from time to time to and including April 1, 1922, by the said Commission and by this Commission during specified portions of the year when surface cars were operated over said line instead of shuttle trains of elevated cars and the said New York Consolidated Railroad Company having by communication, dated March 23, 1922, made application for further suspension of said Order, dated March 20, 1914, and the Commission being of opinion that the operation of surface cars over said line instead of shuttle trains of elevated cars should be permitted as heretofore and that said safety precautions are unnecessary during such operation;

ORDERED that the requirements of the Order of the Public Service Commission for the First District, dated March 20, 1914, as amended and modified be and they are hereby suspended, except during days or parts of days when shuttle trains of elevated cars are operated over said line and that during such days or parts of days the safety precautions prescribed in said Order, dated March 20, 1914, as amended and modified, should be observed and maintained, and the said Order in full force and effect;

FURTHER ORDERED that this Order shall take effect on the 1st day of April, 1922, and shall remain in full force and effect until changed or abrogated by further order of the Commission.

(For the order of March 20, 1914, see 5 P. S. C. R. [1st Dist., N. Y.] 443.)

In the Matter of the Application of INTERBOROUGH RAPID TRANSIT COMPANY for a determination of the just and reasonable rate, fare and charge on the subway and elevated railroads operated by it, and for the authorization of an immediate reasonable temporary increase in the existing rates, fares and charges pending a final determination.

CASE NO. 2632: DENIAL ORDER ENTERED MARCH 28, 1922.

FARES—RAPID TRANSIT RAILROAD—APPLICATION FOR INCREASE OF FARE.—The Order entered was as follows:

The Interborough Rapid Transit Company having by petition, verified March 22, 1922, made application to the Commission for authority to increase the rate of fare charged on the subway and elevated lines operated by it, and the Commission having been advised by Counsel that it is without jurisdiction to entertain said application owing to the provisions of Chapter 153 of the Laws of 1922, amending the Public Service Commission Law;

ORDERED that the said application of the Interborough Rapid Transit Company, verified March 22, 1922, be and the same hereby is in all respects denied for lack of jurisdiction.

In the Matter of the Forms of Annual Report for the year ended December 31, 1921, to be filed by common carriers by steam

and steam railroad corporations within the jurisdiction of the Transit Commission in accordance with Section 46 of the Public Service Commission Law.

CASE NO. 2633: FILING ORDER ENTERED APRIL 1, 1922; EXTENSION ORDER ENTERED JUNE 6, 1922.

ANNUAL REPORTS—STEAM RAILROAD CORPORATIONS—ORDER REQUIRING FILING OF REPORTS FOR YEAR ENDING DECEMBER 31, 1921.—The Order entered April 1, 1922 was as follows:

The Public Service Commission Law having provided that every common carrier, railroad corporation and street railroad corporation, shall file an annual report with the Commission, verified by the President, Treasurer, General Manager or Receiver, and having provided that the Commission shall prescribe the form of such reports and the character of the information to be contained therein,

ORDERED that the common carriers by steam railroad and steam railroad corporations hereinafter enumerated be and hereby are directed to file with the Commission on or before May 31, 1922, annual reports for the year ending December 31, 1921, upon the forms hereinafter indicated:

- (1) State Commission Form A—Steam
Brooklyn Eastern District Terminal
New York Connecting Railroad Company
Staten Island Rapid Transit Railway Company
- (2) State Commission Form C—Small Railroads.
Degnon Terminal Railroad Corporation
The Jay Street Connecting Railroad
New York Dock Railway
- (3) Lessor Steam Railroad Companies.
The Glendale & East River Railroad Company
The New York & Rockaway Beach Railway Company
The New York, Brooklyn & Manhattan Beach Railway Company
Pennsylvania Tunnel & Terminal Railroad Company
The Staten Island Railway Company

Provided, however, that any such steam railroad corporation owning an electric power plant shall include in its report a description of such plant and file a statement of the operations thereof.

- (4) Form C—Bureau of Statistics and Accounts.
(Serial Form R-47)

The Jerome Park Railway Company

FURTHER ORDERED that on or before April 8, 1922, the secretary of the Commission shall serve in the manner prescribed by law upon each of the corporations specified above, a certified copy of this Order together with two (2) copies of the appropriate form herein indicated.

FURTHER ORDERED that each corporation so served shall notify the Commission within five (5) days after the receipt by it of a certified copy of this Order whether the terms thereof are accepted and will be obeyed.

The Order entered June 6, 1922, in effect nunc pro tunc as of May 31, 1922, extended the time of the Brooklyn Eastern District Terminal within which to comply with the terms of the order above set forth to and including June 30, 1922.

In the Matter of the Hearing on motion of the Commission as to the construction, maintenance, stationary equipment and terminal facilities of THE LONG ISLAND RAILROAD COMPANY at its Flatbush Avenue Station, in the Borough of Brooklyn, City of New York.

CASE No. 2629: DISCONTINUANCE ORDER ENTERED APRIL 4, 1922.

STATION CHANGES—STEAM RAILROAD CORPORATION—REPAIRS AND CHANGES AT FLATBUSH AVENUE STATION.—The Order entered discontinued and closed this case as the repairs and changes agreed upon had been instituted.

In the Matter of the Hearing on the motion of the Commission on the question of changes or improvements in the regulations, practices and service of railroad corporations, street railroad corporations and common carriers subject to the jurisdiction of the Commission in respect to smoking on passenger cars and stations.

CASE No. 1689: SUSPENSION ORDERS ENTERED APRIL 11, AND JULY 13, 1922.

SMOKING ON PASSENGER CARS—STREET SURFACE RAILROADS—ORDERS PERMITTING SMOKING UNDER CERTAIN CONDITIONS.—The Orders entered are as follows:

Order of April 11, 1922 as to the New York Railways Company.

A final order having been made herein on August 1, 1913, as amended by Order dated September 16, 1913, which final order as amended, prescribed certain regulations with respect to smoking and the carrying of lighted cigars, cigarettes and pipes on cars operated by all the street railroad corporations subject to the jurisdiction of this Commission, including the New York Railways Company; and application having been made by Frank Hedley, General Manager for Job E. Hedges, Receiver of the New York Railways Company, for a suspension of said final order as amended insofar as the same requires said Company to prohibit smoking and the carrying of lighted cigars, cigarettes and pipes on its cars of the low level, center entrance type, during the time within which the windows are removed from said cars for the summer season; and the Commission being of opinion that such application should be granted subject, however, to the conditions hereinafter stated:

ORDERED:

(1) that said final order as amended be and the same hereby is suspended for and during the period of five (5) months from and after the first day of May, 1922, insofar as the same affects said cars of the low level, center entrance type operated by said New York Railways Company and Job E. Hedges as Receiver thereof, provided, that during said time the windows shall be removed from said cars and provided, also that smoking shall be permitted only on the circular seat in the rear of the car and on one seat on each side of the car, immediately in front of such circular seat and the said Company and Receiver thereof shall make and enforce regulations prohibiting the practices mentioned except as herein permitted and shall post conspicuously in said cars appropriate notices that such practices are prohibited therein except as herein permitted and shall instruct and direct its and his employees to see that such regulations are enforced.

(2) that this Order shall take effect on receipt by the Commission of a communication from said Company and the Receiver thereof accepting the terms and conditions of this Order and promising and agreeing to obey and enforce the same.

(3) that said New York Railways Company and Job E. Hedges, Receiver thereof notify the Commission on or before April 25, 1922, whether the terms of this Order are accepted and will be obeyed.

Order of July 13, 1922, as to the Manhattan and Queens Traction Corporation.

A final order having been made herein by the Public Service Commission for the First District on August 1, 1913 (amended September 16, 1913), which final order as amended prescribed certain regulations in respect of smoking and the carrying of lighted cigars, cigarettes and pipes on cars operated by all the street railroad corporations subject to the jurisdiction of the said Commission, including the Manhattan and Queens Traction Corporation; and application having been made to this Commission by the Manhattan and Queens Traction Corporation, by letter of its General Manager, dated June 28, 1922, for a modification of said final order as amended so as to permit smoking on the three rear seats in cars of the type now operated by the company, while the windows are open; and the Commission being of the opinion that said application should be granted to the extent and in the respects hereinafter mentioned, it is

ORDERED:

(1) That said final order as amended be and the same hereby is suspended, subject, however, to revocation by the Commission, for and during the period extending from the date on which this order shall take effect to October 15, 1922, insofar as the same affects the type of cars now operated by the Manhattan and Queens Traction Corporation; provided that during said time the windows of said cars are removed or are securely fastened so that they cannot be closed by passengers, and provided also that smoking shall be permitted only on the three rear seats on said cars, and that said corporation shall make and enforce regulations prohibiting the practices mentioned, except as herein permitted, and shall post conspicuously in said cars appropriate notices that such practices are prohibited therein, except as herein permitted, and shall instruct and direct their employees to see that such regulations are enforced.

(2) That this order shall take effect on receipt by the Commission of a communication from said corporation accepting the terms and conditions of this order and promising and agreeing to obey and enforce the same.

(3) That said Manhattan and Queens Traction Corporation notify the Commission on or before July 18, 1922, whether the terms and conditions of this order are accepted and will be obeyed and enforced.

(For the orders of August 1 and September 16, 1913, see 4 P. S. C. R. [1st Dist., N. Y.] pp. 383 and 579).

In the Matter of the Hearings before both Commissions concerning the tracks, structures and other property of THE NEW YORK CENTRAL RAILROAD COMPANY and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, at or near 241st Street, in the Borough of The Bronx, City of New York.

CASE No. 1929: ORDERS ENTERED APRIL 25 AND AUGUST 23, 1922.

GRADE CROSSINGS—STEAM RAILROAD CORPORATIONS—CHANGING LINES AND GRADES OF STREET SYSTEM NEAR EAST 241ST STREET.—The Order of April 25, 1922, was as follows:

The Board of Estimate and Apportionment of The City of New York, having by resolution, dated March 31, 1922, made application to the Commission: (1) "to determine the method by which East 241st Street shall be carried across the property of The New York and Harlem, The New York, New Haven and Hartford, and The New York Central Railroad Companies, in the Borough of The Bronx." (2) "To determine that East 241st Street shall be carried across the property of The New York and Harlem, The New York, New Haven and Hartford, and The New York Central Railroad Companies, in the Borough of The Bronx, in accordance with the map or plan bearing the signature of the President of the Borough of The Bronx, dated March 1, 1921, and adopted by the Board of Estimate and Apportionment on May 13, 1921," and it appearing that the Public Service Commissions for the First and Second Districts, have by Joint Order, dated August 3, 1915, determined and directed that the then existing crossing at grade over the tracks of said Railroad Companies be eliminated and that East 241st Street should be carried across the tracks of the said Railroad Companies in substantially the same manner as now requested by the Board of Estimate and Apportionment and upon substantially the lines and grades indicated on said map, dated March 1, 1921, and the said joint order, dated August 3, 1915, being still in force and the subject matter of this present application having been heretofore heard and determined and no reason having been made to appear for a rehearing and redetermination;

ORDERED that the said application of the Board of Estimate and Apportionment of The City of New York, dated March 31, 1922, be and the same hereby is in all respects denied.

The order of August 23, 1922, was as follows:

WHEREAS the Public Service Commissions for the First and Second Districts by Joint order dated August 3, 1915, determined and directed that the then existing crossing at grade over the tracks of the New York and Harlem, the New York, New Haven and Hartford and The New York Central Railroad Companies be eliminated, and determined the manner in which East 241st Street in the Borough of The Bronx, should be carried across the tracks of said railroad companies; and

WHEREAS the Board of Estimate and Apportionment have by resolution dated July 19, 1922, requested the Commission to approve a plan changing the lines and grades of the street system in the vicinity of East 241st Street, said map or plan having been approved by the said Board of Estimate and Apportionment on May 13, 1921, and by the Mayor of The City of New York on May 24, 1921, and being in substantial agreement with the general plan and detailed plans approved by the Transit Commission and by the said Public Service Commissions for the First and Second Districts for the proposed viaduct at East 241st Street.

RESOLVED that the said map or plan changing the lines and grades in the vicinity of East 241st Street and approved by the Board of Estimate and Apportionment by resolution dated May 13, 1921, and approved by the Mayor of The City of New York on May 24, 1921, be and the same hereby is approved.

(For the Order of August 3, 1915, see 6 P. S. C. R. [1st Dist., N. Y.] 401.)

In the Matter of the Application of The City of New York, under Section 91 of the Railroad Law, for a determination as to the manner in which the bridge structure carrying Morris Avenue over the tracks of THE NEW YORK AND HARLEM RAILROAD COMPANY (leased to and operated by THE NEW YORK CENTRAL RAILROAD COMPANY) shall be altered or changed.

CASE NO. 2496-A: APPROVAL RESOLUTIONS ADOPTED APRIL 25, MAY 17, MAY 23, AUGUST 1, AUGUST 9 AND AUGUST 16, 1922.

RECONSTRUCTION OF BRIDGE—STEAM RAILROAD CORPORATION—RESOLUTIONS APPROVING PLANS AND BIDS.—The Resolution adopted April 25, 1922, was as follows:

WHEREAS George W. Kittredge, Chief Engineer, New York Central Railroad Company, by communication dated April 17, 1922, has requested the approval of a detailed plan showing the changes to the approaches and the general features of the bridge to be constructed to replace the existing bridge at Morris Avenue and 156th Street, as provided by Order of the Public Service Commission for the First District, dated October 13, 1920, and said plan having been examined and approved by William L. Selmer, Civil Engineer,

RESOLVED that the said plan bearing the title

"New York & Harlem R. R.

Leased and operated by

N. Y. C. R. R. Co.

Buffalo and East Electric Division

Plan showing changes to approaches in connection with Proposed Reconstruction of Bridge H-21, dated—January 24th, 1922, File No. 65,998, Issue No. "B," be and the same hereby is approved.

FURTHER RESOLVED that the approval of this detailed plan as above indicated shall not bind the State of New York or The City of New York to pay any share of the cost of additions and betterments as they may appear on said detailed plan, over and above such work as is necessary in changing the existing structure.

The Resolution adopted May 17, 1922, was as follows:

WHEREAS the Commission by resolution dated April 25, 1922, approved the detailed plan dated January 24, 1922, for the construction of bridge H-21 to replace the existing bridge at Morris Avenue and 156th Street, as provided by Order of the Public Service Commission for the First District, dated October 13, 1920, and

WHEREAS, The New York Central Railroad Company has received bids for the manufacture and delivery f.o.b. cars Westchester Avenue Freight Station, New York City, of structural steel and castings for said bridge, and

WHEREAS the bid of the Bethlehem Steel Bridge Corporation amounting to \$26,832. is the lowest received, and

WHEREAS the New York Central Railroad Company has by communication dated May 4, 1922, requested the approval of this Commission of the said bid of the said Bethlehem Steel Bridge Corporation, and it appearing to the Commission that said bid is reasonable and should be approved,

RESOLVED that the bid of the Bethlehem Steel Bridge Corporation amounting to \$26,832, for the manufacture and delivery f.o.b. cars Westchester Avenue Freight Station, New York City, for structural steel and castings for Bridge H-21, be and the same hereby is in all respects approved.

FURTHER RESOLVED that the approval of this bid is not and shall not be deemed to be as binding the State of New York or the City of New York to pay any share of the cost of any additions and betterments to the said New York Central Railroad Company over and above such work as is necessary in changing the existing structure.

The Resolution adopted May 23, 1922, was as follows:

WHEREAS The Commission by resolution, dated April 25, 1922, approved the detailed plan, dated January 24, 1922, for the construction of Bridge H-21, to replace the existing bridge at Morris Avenue and 156th Street, in the Borough of The Bronx, as provided by Order of the Public Service Commission for the First District, dated October 13, 1920; and

WHEREAS The Commission by resolution, dated May 17, 1922, approved the bid of the Bethlehem Steel Bridge Corporation, amounting to \$26,832., for the manufacture and delivery f.o.b. cars Westchester Avenue Freight Station, New York City, for structural steel and castings for said bridge; and

WHEREAS The New York Central Railroad Company has submitted plans consisting of six sheets showing the steel details of the superstructure of said bridge; and

WHEREAS the Civil Engineer of the Commission has examined the said plans and recommended that they be approved;

RESOLVED that the plans consisting of six sheets and described as follows of the steel details for the superstructure of Bridge H-21 at Morris Avenue and 156th Street, in the Borough of The Bronx, be and the same hereby are in all respects approved.

New York & Harlem Railroad; Leased and Operated by New York Central R. R. Co.—Buffalo and East Electric Division.

SHEET No. 1

Superstructure Plan; Stress Sheet
Proposed Reconstruction of Bridge H-21
Morris Ave.—one-half mile south of Melrose
New York City.
Dated—March 22, 1922
Issue No. B. File No.—66,005.

SHEET No. 2

Superstructure Plan; Stress Sheet
Proposed Reconstruction of Bridge H-21
Morris Ave.—one-half mile south of Melrose
New York City.
Dated—March 22, 1922
Issue No. B. File No.—66,005.

SHEET No. 3

Superstructure Plan; Stress Sheet
 Proposed Reconstruction of Bridge H-21
 Morris Ave.—one-half mile south of Melrose
 New York City.
 Dated—March 22, 1922
 Issue No. B. File No.—66,005.

SHEET No. 4

Superstructure Plan; General Details
 Proposed Reconstruction of Bridge H-21
 Morris Ave.—one-half mile south of Melrose
 New York City.
 Dated—March 22, 1922
 Issue No. B. File No.—66,005.

SHEET No. 5

Superstructure Plan; General Details
 Proposed Reconstruction of Bridge H-21
 Morris Ave.—one-half mile south of Melrose
 New York City.
 Dated—March 22, 1922
 Issue No. B. File No.—66,005.

SHEET No. 6

Superstructure Plan; General Details
 Proposed Reconstruction of Bridge H-21
 Morris Ave.—one-half mile south of Melrose
 New York City.
 Dated—March 22, 1922
 Issue No. B. File No.—66,005.

FURTHER RESOLVED that the approval of these plans are not and shall not be deemed as binding the State of New York or The City of New York to pay any share of the cost of any additions and betterments to The New York Central Railroad Company over and above such work as is necessary in changing the existing structure.

The Resolution adopted August 1, 1922, was as follows:

WHEREAS The New York Central Railroad Company, by letter dated July 24, 1922, from G. W. Kittredge, its Chief Engineer, has submitted for the approval of this Commission plans consisting of six (6) sheets showing details of reinforced concrete floor, substructure changes, and typical details of paving, curbs, catch basins, etc., of and in connection with the reconstruction of Bridge H-21 at Morris Avenue and 156th Street, in the Borough of The Bronx, said plans being in addition to those heretofore approved and each bearing the general title of New York and Harlem R. R.; Leased and Operated by N. Y. C. R. R. Co.—Buffalo and East Electric Division.

Proposed Reconstruction of Bridge H-21 Morris Ave., ½ mile South of Melrose
 New York City

and respectively bearing detail titles as follows:

(1) of (4)

Plan of Reinforced Concrete Floor
 Bar Diagram and Detail of North Fascia
 New York, July 11, 1922
 Issue No. 1. File No. 66258

(2) of (4)

Plan of Reinforced Concrete Floor
 Schedule of Reinforcing Bars
 New York, July 11, 1922
 Issue No. 1. File No. 66258

(3) of (4)

Plan of Reinforced Concrete Floor

Typical Details

New York, July 11, 1922

Issue No. 1. File No. 66258

(4) of (4)

Plan of Reinforced Concrete Floor

Typical Details and Diagram Locating Bottom of Slabs

New York, July 11, 1922

Issue No. 1. File No. 66258

Details of Paving, Curbs, Catch Basins, etc.

New York, July 11, 1922

Issue No. 1. File No. 66290

Substructure Plan

Alterations to Masonry

New York, May 19, 1922

Issue No. 1. File No. 66160

and

WHEREAS the Engineer of Structures of this Commission has examined said plans and recommended that they be approved, and such recommendation has been approved by the Acting Engineer of Equipment and Operation;

RESOLVED that said plans above described consisting of six (6) sheets be and the same hereby are in all respects approved; provided, however, that this approval of said plans is not, and shall not be deemed to be as, binding the State of New York or The City of New York to pay any share of the cost of any additions and betterments to The New York Central Railroad Company over and above such work as is necessary in changing the existing structure.

The Resolution adopted August 9, 1922, was as follows:

WHEREAS The Chief Engineer of the Borough of The Bronx has by communication, dated July 12, 1922, transmitted for approval specifications for the reconstruction of the bridge over Morris Avenue at 156th Street, in the Borough of The Bronx, pursuant to request of the Chief Engineer of The New York Central Railroad Company by communication dated July 10, 1922, and said specifications having been examined and approved by William L. Selmer, Engineer of Structures of the Commission;

RESOLVED That the specifications for the reconstruction of the superstructure of Bridge H-21, Morris Avenue, in the Borough of The Bronx, entitled as follows:

"THE NEW YORK CENTRAL RAILROAD COMPANY

Buffalo and East

ENGINEERING DEPARTMENT

Specification No. 2427. Issue No. 1. June 27, 1922."
be and they are hereby in all respects approved.

FURTHER RESOLVED That the approval of these specifications as above indicated shall not bind the State of New York or The City of New York to pay any share of the cost of additions and betterments as they may appear in said specifications over and above such work as is necessary in changing the existing structure.

The Resolution adopted August 16, 1922, was as follows:

WHEREAS The New York Central Railroad Company, by George W. Kittredge, Chief Engineer, by letter dated August 5, 1922, submitted for approval certain bids for the reconstruction of the superstructure of the

Morris Avenue bridge and the street and sub-structure changes incidental thereto; and

WHEREAS the Jobson-Gifford Company is the lowest bidder for such work in the amount of \$105,515.50; and

WHEREAS the said bid of the Jobson-Gifford Company appears to be reasonable; it is

RESOLVED that the said bid of said Jobson-Gifford Company for the reconstruction of the superstructure of the Morris Avenue bridge and the street and sub-structure changes incidental thereto, be and the same hereby is approved.

FURTHER RESOLVED that the approval of this bid as above indicated shall not bind the State of New York or The City of New York to pay any share of the cost of additions and betterments as they may appear in said bid over and above such work as is necessary in changing the existing structure.

In the Matter of the Application of the PENNSYLVANIA TUNNEL AND TERMINAL RAILROAD COMPANY for the approval by the Transit Commission of an extension to and including May 31, 1922, of the agreement between that company and the PENNSYLVANIA RAILROAD COMPANY, dated September 14, 1917, for the operation of the railroad and appurtenances of the PENNSYLVANIA TUNNEL AND TERMINAL RAILROAD COMPANY by the PENNSYLVANIA RAILROAD COMPANY as agent.

CASE NO. 2612: ORDER ENTERED JUNE 13, 1922.

OPERATION OF RAILROAD—STEAM RAILROAD CORPORATIONS—ORDER APPROVING EXTENSION OF AGREEMENT FOR OPERATION OF PENNSYLVANIA TUNNEL AND TERMINAL RAILROAD COMPANY.—The Order entered was as follows:

The Pennsylvania Tunnel and Terminal Railroad Company having made application by petition dated and verified May 15, 1922, to the Transit Commission of the State of New York for the approval of an agreement made and entered into the 12th day of May, 1922 between the said Pennsylvania Tunnel and Terminal Railroad Company and the Pennsylvania Railroad Company extending to and including the 30th day of April, 1923 a certain agreement dated September 14, 1917 between said companies for the operation of the railroad and appurtenances of the Pennsylvania Tunnel and Terminal Railroad Company by the Pennsylvania Railroad Company as agent; and a hearing having been had thereon

Now, THEREFORE, after due deliberation and consideration, it is

ORDERED that the said petition be and it is hereby granted and that the extension of the said agreement dated September 14, 1917, between the Pennsylvania Tunnel and Terminal Railroad Company and the Pennsylvania Railroad Company, a copy of which is annexed to the petition herein to and including April 30, 1923, be and it is hereby approved on condition, however, that the extension of the said agreement shall not be taken or construed as in any way affecting the legal obligations of the Pennsylvania Tunnel and Terminal Railroad Company to the State of New York, to the City of New York or the public.

In the Matter of the Forms of Annual Report to be filed by Common Carriers under the jurisdiction of the Commission other than steam railroads.

CASE No. 2661 : ORDERS ENTERED JUNE 20, SEPTEMBER 27, OCTOBER 3 AND 10, 1922.

ANNUAL REPORTS—COMMON CARRIERS—FORM REQUIRED—EXTENSION OF TIME TO FILE REPORTS.—The Order of June 20, 1922, was as follows:

It is hereby

ORDERED that common carriers under the jurisdiction of this Commission other than steam railroad corporations be and they are hereby directed to file with the Commission on or before September 30, 1922, annual reports for the year ending June 30, 1922, in accordance with the following rules and upon the form herein prescribed:

(1) Operating companies—Form E (R-126)

(2) Non-operating companies and/or lessor companies—
Form D (R-125)

(3) Fifth Avenue Coach Company shall make its annual report on Form E (R-126) in so far as said form is applicable to the affairs and circumstances of the said Fifth Avenue Coach Company, provided, that the operating expenses shall be stated in accordance with the classification filed by the Company on or about July 15, 1914.

FURTHER ORDERED that the Secretary of the Commission shall serve upon each of the said common carriers under its jurisdiction other than steam railroad corporations on or before June 30, 1922, a certified copy of this Order together with two copies of the appropriate form in the manner prescribed by law.

FURTHER ORDERED that pursuant to Section 23 of the Public Service Commission Law every person and corporation so served shall notify the Commission within five (5) days in writing of the receipt of said certified copy of this Order and the Forms of annual report aforesaid and that in the case of a corporation such notification must be signed by a person or officer duly authorized by the corporation to admit such service.

The order of September 27, 1922, extended the time of the New York & Queens County Railway Company within which to comply with the terms of the order of June 20, 1922, above set forth to and including October 16, 1922.

The order of October 3, 1922, was as follows:

The Commission having on the 20th day of June, 1922, adopted an Order herein, requiring street railroad corporations under its jurisdiction to file on or before September 30, 1922, an annual report for the year ending June 30, 1922, upon forms prescribed and transmitted with said Order; and the Auditor of the Broadway & Seventh Avenue Railroad Company, Bleecker Street & Fulton Ferry Railroad Company, Fort George & Eleventh Avenue Railroad Company, The Forty-second Street & Grand Street Ferry Railroad Company, Twenty-third Street Railway Company, Bridge Operating Company, Thirty-fourth Street Crosstown Railway Company, Sixth Avenue Railroad Company, Brooklyn & North River Railroad Company, Christopher & Tenth Street Railroad Company, and for Job E. Hedges, as Receiver, for the said Broadway & Seventh Avenue Railroad Company and the Sixth Avenue Railroad Company, having by communication, dated September 27, 1922, made application to the

Commission for an extension of time within which to file said reports and sufficient reason appearing therefor;

ORDERED that the time of the Broadway & Seventh Avenue Railroad Company, Bleecker Street & Fulton Ferry Railroad Company, Fort George & Eleventh Avenue Railroad Company, The Forty-second Street & Grand Street Ferry Railroad Company, Twenty-third Street Railway Company, Bridge Operating Company, Thirty-fourth Street Crosstown Railway Company, Sixth Avenue Railroad Company, Brooklyn & North River Railroad Company, Christopher & Tenth Street Railroad Company, and for Job E. Hedges, as Receiver, for the said Broadway & Seventh Avenue Railroad Company and the Sixth Avenue Railroad Company, within which to comply with the terms of the Order herein, dated June 20, 1922, be and the same hereby is extended to and including October 31, 1922.

FURTHER ORDERED that this Order shall take effect nunc pro tunc as of September 30, 1922.

The order of October 10, 1922, was as follows:

The Commission having on the 20th day of June, 1922, adopted an Order herein, requiring street railroad corporations under its jurisdiction to file on or before September 30, 1922, an annual report for the year ending June 30, 1922, upon forms prescribed and transmitted with said Order; and the Receiver of the Richmond Light & Railroad Company having by communication, dated September 26, 1922, made application for an extension of time within which to file said report, and the Commission being of opinion that no sufficient reason has been made to appear why said extension should be granted:

ORDERED that the application of the Receiver of the Richmond Light & Railroad Company for an extension of time to file its annual report as required by the terms of the Order herein, dated June 20, 1922, be and the same hereby is in all respects denied.

FURTHER ORDERED that this Order shall take effect nunc pro tunc as of September 30, 1922.

In the Matter of the Application of the NEW YORK DOCK RAILWAY
for an order authorizing the issue of its stock.

CASE NO. 1587: ORDERS ENTERED JUNE 27 AND DECEMBER 29, 1922.

STOCK—DOCK RAILWAY CORPORATION—EXTENSION OF TIME TO ISSUE STOCK.—The Order entered June 27, 1922, was as follows:

The Public Service Commission for the First District having by Order, adopted March 28, 1913, authorized the New York Dock Railway to issue capital stock for certain purposes and upon certain conditions therein more specifically set forth, it being provided in said Order that the authority given should apply only to stock issued on or before June 30, 1913, and Orders having been made from time to time by the said Commission and by this Commission extending the time of the said New York Dock Railway within which to issue said stock to and including July 1, 1922, and the said New York Dock Railway having by petition, dated June 15, 1922, made application to the Commission for a further extension of time to December 31, 1922, within which to issue said stock, and the Commission being of opinion that said application should be granted:

ORDERED that the time of the New York Dock Railway within which to issue stock as authorized by the Order of the Public Service Commission for the First District, dated March 28, 1913, be and the same hereby is further extended to and including December 31, 1922.

The Order entered December 29, 1922, further extended the time of the New York Dock Railway within which to issue stock as above-described to and including December 31, 1923.

(For the order of March 28, 1913, see 4 P. S. C. R. [1st Dist., N. Y.] 94.)

In the Matter of the Hearing on motion of the Commission on the question of regulations, practices, equipment, appliances and service of THE NEW YORK CENTRAL RAILROAD COMPANY.—
Operation of Freight Trains on Eleventh Avenue.

CASE NO. 1292: AMENDATORY ORDER ENTERED JUNE 27, 1922,
SUSPENSION ORDERS ENTERED OCTOBER 3 AND 31 AND
NOVEMBER 28, 1922.

OPERATION OF FREIGHT TRAINS, ELEVENTH AVENUE—STEAM RAILROAD CORPORATION—REGULATIONS AS TO OPERATION OF TRAINS.—The order entered June 27, 1922, was as follows:

The Public Service Commission for the First District having on the 13th day of December, 1910, adopted an Order herein, which provided, among other things, that the New York Central & Hudson River Railroad Company (now The New York Central Railroad Company) should not operate any freight trains on Eleventh Avenue, Borough of Manhattan, City of New York, on Sundays, between 10 A. M. and 12 noon, and the said The New York Central Railroad Company having by communication, dated June 15, 1922, made application to the Commission for a modification of that portion of the said Order, dated December 13, 1910, and it appearing to the Commission that said application should be granted in part:

ORDERED that that portion of the said Order, dated December 13, 1910, prohibiting the operation of freight trains on Eleventh Avenue, Borough of Manhattan, City of New York, between 10 A. M. and 12 noon, Sundays, be and it is hereby abrogated but upon the following express conditions and not otherwise; that The New York Central Railroad Company be and it is hereby permitted to move cars of perishable freight southbound from the 60th Street to the 30th Street Yards, during the restricted hours, that is, from 10 A. M. to 12 noon, Sundays, and that movement of any other cars in any other direction be and it is hereby prohibited as heretofore.

FURTHER ORDERED that within ten (10) days after the service upon it of a certified copy of this Order in the manner prescribed by law The New York Central Railroad Company shall notify the Commission in writing whether the terms thereof are accepted and will be obeyed.

The order entered October 3, 1922, was as follows:

The Public Service Commission for the First District having on the 13th day of December, 1910, adopted an Order herein, prohibiting the operation by The New York Central Railroad Company of freight trains on Eleventh Avenue, in the Borough of Manhattan, City of New York, during certain hours of

the day and night therein specified; and the said The New York Central Railroad Company having by communication, dated September 30, 1922, made application for a suspension of the said Order herein, dated December 13, 1910, for the month of October, 1922, because of the unusually heavy arrivals of fruit and other perishable freight due to the existing embargo on this class of freight by other railroads serving the City of New York, and it appearing to the Commission that good cause has been shown why the said application should be granted:

ORDERED that the said Order herein, dated December 13, 1910, be and the same hereby is suspended in so far as it prohibits or regulates the operation of freight trains on Eleventh Avenue, Borough of Manhattan, City of New York, during the month of October, 1922.

FURTHER ORDERED that on and after the 1st day of November, 1922, the said Order herein, dated December 13, 1910, shall be and remain in full force and effect unless and until otherwise ordered by this Commission.

The orders entered October 31 and November 28, 1922, were substantially identical with the order of October 3, 1922, above and continued the suspension of the order of December 13, 1910, through November and December, 1922, respectively.

(For a summary of the order of December 13, 1910, see 3 P. S. C. R. [1st Dist., N. Y.] 669.)

In the Matter of the Application of the HUDSON AND MANHATTAN RAILROAD COMPANY under Section 55 of the Public Service Commission Law for an order authorizing the issuance of \$1,054,000 of bonds.

CASE No. 2367: ORDER ENTERED JUNE 27, 1922.

BONDS—RAPID TRANSIT RAILROAD—ORDER MODIFYING ORDER AUTHORIZING ISSUANCE OF BONDS.—The Order entered was as follows:

The Hudson and Manhattan Railroad Company having made application by letter dated June 1, 1922, for a further extension of time to and including May 31, 1923, within which to issue \$1,036,000 face value of bonds allowed under the terms of the order made and filed herein by the Public Service Commission for the First District on May 24, 1919, as modified by orders of said Commission on December 16, 1919, June 25, 1920, and December 28, 1920, and as further modified by orders of the Transit Commission on June 9, 1921, and December 6, 1921, and it appearing to this Commission that said application should be granted, and that such extension should be given, to the extent of an extension of such time to and including December 31, 1922; it is

ORDERED that paragraph "Fourth" of Section 3 of the said order of May 24, 1919, as heretofore modified, be and the same hereby is further modified to read as follows:

Fourth: That the authority hereby given to issue such bonds shall apply only to bonds issued by said company on or before the 31st day of December, 1922.

FURTHER ORDERED that this Order shall take effect immediately.

In the Matter of the Hearing on the motion of the Commission upon the regulations, practices, equipment, appliances and service of the INTERBOROUGH RAPID TRANSIT COMPANY.

CASE No. 2627: ORDER ENTERED JULY 6, 1922.

TRAILER CARS AND EQUIPMENT TRUST CERTIFICATES—RAPID TRANSIT RAILROAD—ORDER APPROVING PURCHASE OF TRAILER CARS AND ISSUANCE OF EQUIPMENT TRUST CERTIFICATES.—The Order entered was as follows:

ORDER APPROVING "INTERBOROUGH EQUIPMENT TRUST SERIES 'A'"

WHEREAS the Transit Commission on May 2, 1922, adopted and served a final order herein directing Interborough Rapid Transit Company to order, equip and have ready for operation as more particularly set forth in said Order, 350 steel cars for use in the operation of the Railroad and Existing Railroads described in a certain contract dated March 19, 1913, entered into between The City of New York, acting by the Public Service Commission for the First District and Interborough Rapid Transit Company for the construction, equipment, maintenance and operation thereof, which contract is known and hereinafter referred to as Contract No. 3, which order was duly accepted in writing by said Interborough Rapid Transit Company on May 3, 1922; and

WHEREAS by petition dated and verified the 23rd day of June, 1922, said Interborough Rapid Transit Company has requested this Commission to approve of:

- (a) the purchase of 100 steel trailer cars complete as set forth in a certain proposed Equipment Lease and Agreement comprising the "Interborough Equipment Trust, Series 'A'" as Additional Equipment in accordance with the provisions of and as is more particularly defined in said Contract No. 3; and
- (b) the issuance and sale at par by said petitioner of the principal amount of the sum of \$1,400,000 of six per cent. (6%) equipment trust certificates, the proceeds of which are to be used by said petitioner to pay in part the cost of said 100 steel trailer cars complete; and
- (e) the execution by said petitioner of instruments creating such equipment trust in form as annexed to said petition;

and

WHEREAS after due deliberation and consideration it is now the opinion of this Commission that the money to be procured by the issuance of said equipment trust certificates is necessary to and reasonably required by said Interborough Rapid Transit Company for the purpose of permitting it to comply with the said order issued by this Commission on May 2, 1922, as aforesaid;

ORDERED that the Transit Commission does hereby approve of the purchase by said Interborough Rapid Transit Company of 100 steel trailer cars as outlined in its petition aforesaid as "Additional Equipment" in accordance with the provisions of Contract No. 3, subject, however, to the following conditions:

1. That the rentals payable by the Interborough Rapid Transit Company under said Equipment Lease and Agreement shall for the purposes of accounting under said Contract No. 3 be divided and paid as follows:

- (a) Capital payments being the cost as defined in subdivision 18 of Article II of Contract No. 3 shall be paid by the Interborough Rapid Transit Company out of its own resources realized from the stipu-

lated contractual deduction from Revenue in accordance with Subdivision (6) of Article XLIX of said Contract No. 3.

- (b) Revenue deductions, including interest payments accruing on any of the said 100 trailer cars complete after the placing in operation of the same shall be paid from the stipulated contractual deduction from Revenue in accordance with Subdivision (8) of Article XLIX of said Contract No. 3.

2. That no charges other than expenses which may be properly included in the actual and necessary net Cost of Equipment as defined in Contract No. 3 as if actually provided by said Interborough Rapid Transit Company, shall be added to the cost of acquiring said 100 steel trailer cars.

3. That the Interborough Rapid Transit Company will upon written direction by the Commission, or its successors, so to do, request the Trustee in accordance with the said Equipment Lease and Agreement forming part of said petition aforesaid to invest the deposits made with said Trustee in bonds or notes of The City of New York or in certificates of indebtedness of the United States.

4. That full depreciation allowance on said 100 trailer cars complete shall be paid by the Interborough Rapid Transit Company from Revenue from the agreed contractual deduction as provided for in Subdivision (5) of Article XLIX of said Contract No. 3.

FURTHER ORDERED, That Interborough Rapid Transit Company be and it is hereby authorized to enter into and to execute the agreement constituting the said equipment trust and the equipment lease provided for therein, and thereby to assume and discharge the obligations on its part created by said instruments, including payment of sums sufficient to pay the face amount of and the dividends upon the equipment trust certificate provided to be issued by the Trustee under said trust agreement for an aggregate face amount not exceeding \$1,400,000, of which certificates one-fifth of such face amount or \$280,000, shall mature each year during the period of five years from and after the date of such certificates, and on all of which certificates there shall be payable dividends at the rate of six per cent. (6%) per annum until the respective maturities, payable semi-annually, all as set forth and provided in the said agreement and equipment lease made part of said petition.

FURTHER ORDERED that the issuance of said equipment trust certificates is authorized and consented to upon the conditions following and not otherwise, to wit;

- (a) that the said \$1,400,000 of said certificates shall be issued for a consideration equal to the par value thereof and that the Interborough Rapid Transit Company shall cause the said certificates and the proceeds thereof to be applied only for and to the purposes set forth in the above-mentioned petition and the proposed equipment lease and agreement creating the said Equipment Trust, Series "A," and so that by the use of such certificates or the proceeds thereof there shall be paid for and discharged, as set forth in the proposed Equipment Trust instruments, an amount of the cost of construction of the cars in said instruments described equal to the par value of the said \$1,400,000 of certificates.
- (b) that the said Interborough Rapid Transit Company shall keep separate, true and accurate accounts showing in detail the proceeds of the sale and disposal of the said equipment trust certificates hereby authorized to be issued, and on or before the 15th day of each month the said Interborough Rapid Transit Company shall make verified reports to this Commission stating the sale or sales of said certificates during the previous month, the moneys realized therefrom and the use and application of such moneys, stating further the source and the use and application of any other moneys paid under the said equipment trust agreement and lease; and said accounts, the vouchers and the

records shall be open to audit and may be audited from time to time by accountants and examiners designated for such purpose by the Commission.

- (c) that the approval herein given for the issuance of said equipment trust certificates is without prejudice to any contentions or arguments which the City of New York or the Transit Commission or either of them may have or desire to make at any time with respect to the proper construction of and the force and effect of any of the terms, provisions and conditions of said Contract No. 3 and is also without prejudice to any claims which the City of New York may desire to assert that the Interborough Rapid Transit Company under said Contract No. 3 is at the present time in default thereunder.
- (d) that nothing contained in this approval shall amend or modify or be deemed to amend or modify said Contract No. 3 or to relieve the Interborough Rapid Transit Company thereunder of the performance of the obligations of said contract in accordance with its terms.
- (e) that nothing herein in this order contained shall prejudice any right otherwise possessed by The City of New York or the Transit Commission to object to any expenditure of proceeds of certificates hereby authorized or any expenditure in connection with the equipment trust agreement and lease, the propriety or correctness of which expenditure may be presented for determination pursuant to Contract No. 3 or to investigate further and to question and reject as a claim, credit or charge under said Contract No. 3 any expenditure in connection with, the sale of or made out of the proceeds of such certificates or any expenditure in connection with the equipment trust agreement and lease or of any part thereof even though claimed by the Interborough Rapid Transit Company to be made for the purposes specified in this order or in the proposed agreement and equipment lease creating the Interborough Equipment Trust, Series "A."
- (f) the consent herein contained is given upon the further express condition that such consent shall take effect if and when and only when consent to said agreement and equipment lease creating the Interborough Equipment Trust, Series "A," shall be given, duly executed and acknowledged in form to be approved by Counsel to this Commission, by the sureties upon the continuing bond deposited by said Interborough Rapid Transit Company in accordance with the provisions of Article XVII of said Contract No. 3.
- (g) Nothing in this order or in the said petition and equipment lease and agreement contained or in the action of the Commission in adopting this order shall be understood or construed to mean or provide for the extension of any period of time in Contract No. 3 for any purpose whatsoever notwithstanding that said equipment trust certificates herein authorized are not to mature for a period of five (5) years.
- (h) the Interborough Rapid Transit Company shall require the submission to this Commission for approval of any contract or agreement entered into by Rapid Transit Subway Construction Company to the same extent that the Interborough Rapid Transit Company is required to submit contracts and agreements under Contract No. 3.

FURTHER ORDERED that the Interborough Rapid Transit Company shall notify the Transit Commission within five (5) days after service upon it of a copy of this order whether the terms of this order are accepted and will be obeyed.

(For previous orders entered in this case in 1922, see page 73 of this volume.)

In the Matter of Monthly reports of street and electric railway companies.

CASE NO. 1379: ORDER ENTERED JULY 25, 1922.

MONTHLY REPORTS—ELECTRIC RAILWAYS COMPANY—ORDER EXTENDING TIME TO MAKE REPORT.—The order entered extended the time of S. W. Huff and R. C. Lee, Receivers of the Steinway Railways within which to file the report of operation of the Steinway Railways for the month ending May 31, 1922, to and including August 1, 1922.

In the Matter of the Hearing on the motion of the Commission upon the regulations, practices, equipment, appliances and service of the NEW YORK CONSOLIDATED RAILROAD COMPANY, the NEW YORK MUNICIPAL RAILWAY CORPORATION, and LINDLEY M. GARRISON, as Receiver of said NEW YORK CONSOLIDATED RAILROAD COMPANY and NEW YORK MUNICIPAL RAILWAY CORPORATION.

CASE No. 2628: Orders entered August 3 and 9 and September 27, 1922; Approval Resolution adopted September 27, 1922; Amendatory Order entered November 14, 1922; Approval Resolutions Adopted December 19 and 27, 1922.

SERVICE—RAPID TRANSIT RAILROAD—APPROVAL OF TRAIN SCHEDULES—ORDERS AS TO B. R. T. SERVICE.—The Order entered August 3, 1922, was as follows:

WHEREAS by order of the Transit Commission bearing date July 13, 1922, the New York Consolidated Railroad Company and Lindley M. Garrison as Receiver of said New York Consolidated Railroad Company were required to make and file with the Transit Commission full and complete train schedules showing the operation, in accordance with said order, of the therein prescribed number of trains, intervals between trains and cars per train; and

WHEREAS on August 1, 1922, said New York Consolidated Railroad Company and Lindley M. Garrison, as Receiver of New York Consolidated Railroad Company, filed with the Transit Commission train schedules in accordance with the terms of said order of July 13, 1922; and

WHEREAS said train schedules filed as aforesaid have been examined by said Transit Commission,

NOW, THEREFORE, IT IS ORDERED that said train schedules, more specifically designated as Schedule No. 1 for each of the following lines:

- West End Line
- Fulton Street Line
- Bay Ridge Line
- Broadway Line (Brooklyn)
- Culver Line
- Lexington Avenue Line
- Sea Beach Line
- Fourth Avenue Line
- Brighton Line (including Franklin Avenue—Prospect Park Service)
- Myrtle Avenue Line
- Broadway Subway Line (Manhattan)

be and the same hereby are approved, and it is

FURTHER ORDERED that New York Consolidated Railroad Company and Lindley M. Garrison, as Receiver of said New York Consolidated Railroad Company, shall, on or before the 15th day of August, 1922, furnish and operate the service on said lines pursuant to said train schedules.

The Order entered August 9, 1922, was as follows:

An order having been made in the above entitled proceeding on August 3, 1922 approving certain train schedules filed by the New York Consolidated Railroad Company and Lindley M. Garrison, as Receiver of the New York Consolidated Railroad Company and directing said Railroad Company and said Receiver to furnish and operate the service called for by said train schedules on or before the 15th day of August, 1922; and there having arisen the present shortage of coal and the uncertainty as to future supplies, it is

ORDERED that the New York Consolidated Railroad Company and Lindley M. Garrison, as Receiver of the New York Consolidated Railroad Company shall furnish and operate the service called for by the order of the Commission in this case bearing date August 3, 1922, on or before the 18th day of September, 1922; and it is

FURTHER ORDERED that said Transit Commission may order said service to begin at an earlier date on giving two weeks notice thereof to said Railroad Company and said Receiver.

The Order entered September 27, 1922, was as follows:

The Commission having on the 13th day of July, 1922, adopted Service Order "A" herein, which required, among other things, the New York Consolidated Railroad Company and Lindley M. Garrison, its Receiver, to file train schedules in accordance with said Order indicating the operation in detail including the interval between trains and cars per train, and the said New York Consolidated Railroad Company and its Receiver having on the 25th day of September, 1922, filed such schedules and said schedules having been examined and found in substantial compliance with said Order, dated July 13, 1922:

ORDERED that said schedules of the New York Consolidated Railroad Company and its Receiver be and they are hereby in all respects approved.

FURTHER ORDERED that said schedules be and they are hereby issued to said New York Consolidated Railroad Company and its Receiver.

The Approval Resolution adopted September 27, 1922, was as follows:

WHEREAS by final order adopted in the above entitled proceeding the Transit Commission directed and ordered Lindley M. Garrison, as Receiver of New York Municipal Railway Corporation and said New York Municipal Railway Corporation and Lindley M. Garrison, as Receiver of New York Consolidated Railroad Company and said New York Consolidated Railroad Company to purchase, install and operate fifty additional steel cars on the railroads operated by him or them; and

WHEREAS by communication dated September 6, 1922, the Engineer of Equipment & Operation of this Commission has interrogated this Commission with respect to the obligation of said Receiver and Companies under the terms of said final order aforesaid and Hon. John F. O'Ryan, Commissioner, by communication dated September 22, 1922, advised the Secretary of this Commission as follows:

"The question as to whether the fifty new cars to be ordered by the B. R. T. ought to be trailer cars was determined this morning in conference with Mr. Menden (all Commissioners being present). The Commission agreed with Judge Mayer that owing to the lack of funds the new cars to be ordered by the B. R. T. should be trailer cars. Discussion of the technical side of the

merits of the question did not appear to be relevant, and the Commission confirmed the understanding. See letter from the B. R. T. written by Mr. Owen, and reply thereto, signed by the Secretary of the Commission.

Please place this matter of the agreement reached today on the calendar for the next meeting for formal confirmation of the Commission, and inform Mr. Latey thereof, so that approval of the purchase may be formally made subject to approval of details of design."

RESOLVED that the said foregoing understanding as expressed in said communication of Commissioner O'Ryan be and the same hereby is in all respects confirmed.

The Order entered November 14, 1922, was as follows:

The Commission having on the 13th day of July, 1922, adopted an Order herein designated as Service Order "A," which Order prescribed among other things, that said New York Consolidated Railroad Company, and Lindley M. Garrison, its Receiver, should on thirty (30) days' notice by the Commission but in any event not later than November 15, 1922, operate daily except Saturday afternoons, Sundays and legal holidays, the service in said Order specified, and the said New York Consolidated Railroad Company and its Receiver, having made application to the Commission for a modification of said Order so as to postpone the effective date for the operation herein referred to and sufficient reason appearing therefor:

ORDERED that paragraph 3 on page 15 of the Order herein, dated July 13, 1922, and designated as Service Order "A" be and it is hereby amended to read as follows:

3. The New York Consolidated Railroad Company and Lindley M. Garrison, as Receiver of said New York Consolidated Railroad Company, is hereby ordered on and after thirty (30) days' notice by the Commission but in any event not later than December 15, 1922, to operate daily except Saturday afternoons, Sundays and legal holidays, on the lines or divisions past the stations in the directions during the periods at the times and at the headways hereinbefore specified, the following, trains with a sufficient number of cars per train, to conform to the traffic requirements.

FURTHER ORDERED that in all other respects the said Order herein, dated July 13, 1922, and designated Service Order "A", shall be and remain in full force and effect, unless and until changed or abrogated by further Order of the Commission.

The approval resolution adopted December 19, 1922, was as follows:

The Commission having on the 13th day of July, 1922, adopted Order "A" herein specifying the schedule of service to be provided and maintained on the subway and elevated lines of the New York Consolidated Railroad Company and its Receiver; and said Order as amended having required the said New York Consolidated Railroad Company and its Receiver to submit schedules of the operation required in said Order as amended to be effective December 15, 1922, for the approval of the Commission; and the said New York Consolidated Railroad Company and its Receiver having submitted said schedules of operation of its Sea Beach and West End Subway lines and said schedules having been examined and approved by the Chief Executive Officer of the Commission:

ORDERED that the said schedules of operation of the New York Consolidated Railroad Company and its Receiver on its Sea Beach and West End Subway lines to be effective December 15, 1922, be and the same hereby are approved.

The approval resolution adopted December 27, 1922, was as follows:

The Commission having on the 13th day of July, 1922, adopted Order "A" herein specifying the schedule of service to be provided and maintained on the subway and elevated lines of the New York Consolidated Railroad Company and its Receiver; and said Order as amended and modified having required the said New York Consolidated Railroad Company and its Receiver to submit schedules of operation of the Fulton Street Line required in said Order as amended and modified to be effective December 26, 1922, for the approval of the Commission; and the said New York Consolidated Railroad Company and its Receiver having submitted said schedules and said schedules having been examined and approved by the Chief Executive Officer of the Commission:

ORDERED that the said schedules of operation of the Fulton Street Line of the New York Consolidated Railroad Company and its Receiver effective December 26, 1922, be and the same hereby are approved.

(For the Orders entered in this Case on July 13, 1922, and the Memorandum in respect thereto, see page 128 of this volume.)

In the Matter of the Application of The City of New York for a determination as to the manner in which 84th Street (Digby Street) in the Fourth Ward of the Borough of Queens shall be carried across the tracks of the Atlantic Division of the Long Island Railroad Company.

CASE No. 2300: ORDER ENTERED SEPTEMBER 7, 1922.

NEW STREET ACROSS TRACKS—STEAM RAILROAD CORPORATION—ORDER ACCEPTING WORK.—The Order entered was as follows:

The Public Service Commission for the First District having, on the 27th day of August, 1918, made an order herein determining the manner in which 84th Street (Digby Street) in the Fourth Ward of the Borough of Queens, City of New York, should cross the tracks of the Atlantic Division of the Long Island Railroad Company and having determined that said 84th Street (Digby Street) should be carried under the grade of said railroad in the manner and method and by the grade or grades substantially as shown on a map or plan bearing date February 20, 1918, and marked in evidence as Exhibit No. 4 at the hearing held in this proceeding, and this Commission being now in receipt of a communication from W. L. Selmer, Civil Engineer, dated August 17, 1922, stating that the work contemplated in and by said order dated August 27, 1918, has been satisfactorily completed and recommending that such work receive the approval of the Commission,

ORDERED that the aforesaid work directed to be performed in and by said order dated August 27, 1918, which has been completed, be and the same hereby is accepted and approved.

In the Matter of the Hearing on the motion of the Commission with respect to the abrogation of final orders in Cases Nos. 1331 and 1365 and the making of a new order regarding the service of the NEW YORK AND LONG ISLAND TRACTION COMPANY, on its Brooklyn-Mineola Division within the City of New York.

CASE No. 2203

In the Matter of the Hearing on the motion of the Commission on the question of improvements in and addition to the service, equipment, regulations and practices of the NEW YORK RAILWAYS COMPANY in respect to the transportation of passengers on its street surface railroad lines.

CASE No. 2322

In the Matter of the Hearing on the motion of the Commission on the question of improvements in and addition to the service, equipment, regulations and practices of the NEW YORK CONSOLIDATED RAILROAD COMPANY and the SOUTH BROOKLYN RAILWAY COMPANY, in respect to the transportation of passengers on the Culver Line.

CASE No. 2332

In the Matter of the Hearing on the motion of the Commission on the question of improvement in and addition to the service, equipment, tracks, structures, regulations and practices of the DRY DOCK, EAST BROADWAY & BATTERY RAILROAD COMPANY, THIRD AVENUE RAILWAY COMPANY, BELT LINE RAILWAY CORPORATION, FORTY-SECOND STREET, MANHATTANVILLE & ST. NICHOLAS AVENUE RAILWAY COMPANY, MID-CROSSTOWN RAILWAY COMPANY, INC., and THIRD AVENUE BRIDGE COMPANY, in respect to the transportation of passengers on its street surface railroad lines.

CASE No. 2349

In the Matter of the Hearing on the motion of the Commission on the question of improvement in and addition to the service, equipment, tracks, structures, regulations and practices of the UNION RAILWAY COMPANY of New York City, SOUTHERN BOULEVARD RAILROAD COMPANY, BRONX TRACTION COMPANY, YONKERS RAILROAD COMPANY, WESTCHESTER ELECTRIC RAILROAD COMPANY and PELHAM PARK & CITY ISLAND RAILWAY COMPANY, INC., in respect to transportation of passengers on its street surface railroad lines.

CASE No. 2350

In the Matter of the Hearing on the motion of the Commission on the question of improvement in and addition to the service, equipment, tracks, structures, regulations and practices of the RICHMOND LIGHT & RAILROAD COMPANY, STATEN ISLAND MIDLAND RAILWAY COMPANY and the SOUTHFIELD BEACH RAILROAD COMPANY in respect to the transportation of passengers on its street surface railroad lines.

CASE No. 2356

In the Matter of the Hearing on the motion of the Commission as to the regulations, practices, service, equipment and appliances of the LONG ISLAND ELECTRIC RAILWAY COMPANY on its Jamaica-Far Rockaway Line.

CASE No. 2398

In the Matter of the Hearing on the motion of the Commission on the question of improvement in and addition to the service, equipment, regulations and practices of the BROOKLYN CITY RAILROAD COMPANY in respect to the transportation of passengers on its surface lines.

CASE No. 2476

In the Matter of the Hearing on the motion of the Commission on the question of improvements in and additions to the service, equipment, tracks, structures, regulations and practices of the NEW YORK AND LONG ISLAND TRACTION COMPANY in respect

of the transportation of passengers on its surface railroad lines.

CASE No. 2550

In the Matter of the Hearing on the motion of the Commission on the question of improvements in and additions to the service, equipment, tracks, structures, regulations and practices of the LONG ISLAND ELECTRIC RAILWAY COMPANY in respect of the transportation of passengers on its street surface railroad lines.

CASE No. 2563

In the Matter of the Hearing on the motion of the Commission on the question of improvement in and addition to the service, equipment, tracks, structures, regulations and practices of the NINTH AVENUE RAILROAD COMPANY in respect to the transportation of passengers on its street surface railroad lines.

CASE No. 2591

CASES Nos. 2203, 2322, 2332, 2349, 2350, 2356, 2398, 2476, 2550, 2563, 2591: DISCONTINUANCE ORDERS ENTERED NOVEMBER 8, 1922.

SERVICE AND EQUIPMENT—STREET SURFACE AND RAPID TRANSIT RAILROADS—ORDERS CLOSING CASES.—The Orders entered in the above-entitled cases discontinued and closed the same.

TABLE OF CASES DECIDED WITHOUT THE WRITING OF OPINIONS

CASE No.	PAGE
1292 Service; THE NEW YORK CENTRAL RAILROAD Co.—Operation of Freight Trains on Eleventh Avenue	246
1379 Monthly Reports of Street and Electric Railway Corporations	250
1399 Quarterly Reports of Street and Electric Railway Corporations	230
1587 Application of NEW YORK DOCK RAILWAY for an order authorizing issue of stock	245
1635 Matter of the NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, stopping of trains at Hunts Point, Casanova and Port Morris	229
1689 Regulations of RAILROAD CORPORATIONS, STREET RAILROAD CORPORATIONS and COMMON CARRIERS in respect to smoking on passenger cars and in stations	236
1754 Adequacy of station approaches to the Jamaica Station of THE LONG ISLAND RAILROAD COMPANY	229
1765 Additional safety precautions at grade crossings of tracks of NEW YORK CONSOLIDATED RAILROAD COMPANY on Canarsie Line, Borough of Brooklyn	233
1929 Grade Crossing Elimination—THE NEW YORK CENTRAL RAILROAD Co. and THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY at 241st Street, Bronx	238
1952 Matter concerning carrying of bundles, newspapers, baggage, etc., by passengers on Rapid Transit Railroads	233
2203 Service of THE NEW YORK AND LONG ISLAND TRACTION Co. on its COMPANY and SOUTH BROOKLYN RAILROAD COMPANY	255
2300 Application of City of New York for determination as to manner in which 84th Street, Queens, shall be carried across tracks of THE LONG ISLAND RAILROAD COMPANY	254
2322 Service on lines of NEW YORK RAILWAYS COMPANY	255
2332 Service on Culver Line of NEW YORK CONSOLIDATED RAILROAD COMPANY and SOUTH BROOKLYN RAILWAY COMPANY	255
2349 Service on lines of DRY DOCK, EAST BROADWAY & BATTERY RAILROAD COMPANY, THIRD AVENUE RAILWAY COMPANY, BELT LINE RAILWAY CORPORATION, FORTY-SECOND STREET, MANHATTANVILLE & ST. NICHOLAS AVENUE RAILWAY Co., MID-CROSSTOWN RAILWAY COMPANY, INC., and THIRD AVENUE BRIDGE Co.	255
2350 Service on lines of UNION RAILWAY COMPANY, SOUTHERN BOULEVARD RAILROAD COMPANY, BRONX TRACTION COMPANY, YONKERS RAILROAD COMPANY, WESTCHESTER ELECTRIC RAILROAD COMPANY and PELHAM PARK & CITY ISLAND RAILWAY COMPANY, INC.	256
2356 Service on lines of RICHMOND LIGHT & RAILROAD COMPANY, STATEN ISLAND MIDLAND RAILWAY COMPANY and SOUTHFIELD BEACH RAILROAD COMPANY	256

CASE No.	PAGE
2367 Application of HUDSON & MANHATTAN RAILROAD COMPANY to issue \$1,054,000 bonds	247
2398 Service on Jamaica-Far Rockaway Line of THE LONG ISLAND ELECTRIC RAILWAY COMPANY	256
2427 Wage and Employee Agreements of STREET RAILROAD CORPORATIONS	230
2476 Service on Lines of BROOKLYN CITY RAILROAD COMPANY	256
2496A Reconstruction of Bridge carrying Morris Avenue over tracks of THE NEW YORK AND HARLEM RAILROAD COMPANY (leased to and operated by THE NEW YORK CENTRAL RAILROAD Co.)	239
2550 Service on Lines of THE NEW YORK & LONG ISLAND TRACTION Co.	256
2563 Service on Lines of THE LONG ISLAND ELECTRIC RAILWAY Co.	257
2588 Fares and Continuation of Fare Zones—Metropolitan Avenue Line of BROOKLYN, QUEENS COUNTY & SUBURBAN RAILROAD COMPANY, Lindley M. Garrison, Receiver	231
2591 Service on Lines of NINTH AVENUE RAILROAD COMPANY	257
2612 Approval of Operating Agreement—PENNSYLVANIA TUNNEL & TERMINAL RAILROAD COMPANY to PENNSYLVANIA RAILROAD COMPANY as Agent	243
2627 Trailer Cars and Equipment Trust Certificates—INTERBOROUGH RAPID TRANSIT COMPANY	248
2628 Service on Lines of NEW YORK CONSOLIDATED RAILROAD COMPANY and NEW YORK MUNICIPAL RAILWAY CORPORATION, LINDLEY M. GARRISON, Receiver	251
2629 Station Changes at Flatbush Avenue Station, Brooklyn, of THE LONG ISLAND RAILROAD COMPANY	236
2632 Fares—INTERBOROUGH RAPID TRANSIT COMPANY	234
2633 Forms of Annual Report for Year ending December 31, 1921, COMMON CARRIERS BY STEAM AND STEAM RAILROAD CORPORATIONS	234
2661 Forms of Annual Report for Year ending June 30, 1922, all COMMON CARRIERS OTHER THAN STEAM RAILROAD CORPORATIONS	244



